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*Federal Public Sector
Labour Relations and
Employment Board Act and
Federal Public Sector
Labour Relations Act*



Before a panel of the
Federal Public Sector
Labour Relations and
Employment Board

BETWEEN

KEITH REILLY

Grievor

and

**TREASURY BOARD
(Department of Transport)**

Employer

Indexed as

Reilly v. Treasury Board (Department of Transport)

In the matter of an individual grievance referred to adjudication

Before: Steven B. Katkin, a panel of the Federal Public Sector Labour Relations
and Employment Board

For the Grievor: Zachary Rodgers, counsel

For the Employer: Calvin Hancock, counsel

Heard by videoconference,
September 19 and 20 and November 8, 2023,
and by written submissions,
filed December 15, 2023, and January 19 and February 2 and 7, 2024.

REASONS FOR DECISION

I. Individual grievance referred to adjudication

[1] Keith Reilly (“the grievor”) was a civil aviation safety inspector (classified at the TI-06 group and level) with Transport Canada (“the employer”). On January 4, 2012, he grieved that he was entitled to the “terminable allowance” set out in Appendix P of the Technical Services collective agreement between the Public Service Alliance of Canada (“the union”) and the Treasury Board that expired on June 21, 2011 (“the collective agreement”). The employer denied the grievance, and the union referred it to adjudication with the Federal Public Sector Labour Relations and Employment Board (“the Board”, which in this decision also refers to any of its predecessors).

[2] The issue before the Board was whether the grievor had the “... six (6) to ten (10) years of manufacturing process experience” required by Appendix P to be eligible for the terminable allowance.

[3] The grievor submitted that he had the required experience based on his work with flight progress strips and airport zoning regulations (AZRs), both of which he characterized as manufacturing processes. The employer submitted that he performed skilled and highly valued work in those two areas but that the work did not constitute manufacturing process experience.

[4] I find that neither the grievor’s work with flight progress strips nor with AZRs constituted manufacturing process experience that would make him eligible to receive the terminable allowance.

II. Background

[5] When the grievance was filed, Appendix P of the collective agreement read as follows:

...
In an effort to resolve retention problems, the Employer will provide an allowance to incumbents of specific positions for the performance of duties in the Technical Inspection Group.

[...]
Dans le but de résoudre les problèmes de maintien en poste de l'effectif, l'Employeur versera une indemnité aux titulaires de certains postes faisant partie du Groupe de l'inspection technique.

Employees in Transport Canada ... who are incumbents at the TI-5 through TI-8 levels in the following positions and who possess the listed qualifications shall be entitled to Terminable Allowances as listed below.

...

civil aviation safety inspectors holding a university degree ... with six (6) to ten (10) years of manufacturing process experience....

...

[Emphasis added]

Les employé-e-s de Transports Canada [...] titulaires des postes de niveau TI-5 à TI-8 énumérés ci-dessous et possédant les qualités précisées sont admissibles aux indemnités provisoires énumérées ci-dessous.

[...]

Les inspecteurs de l'aviation civile titulaires d'un diplôme universitaire [...] qui possèdent de six (6) à dix (10) années d'expérience en procédé de fabrication. [...]

[...]

[6] On October 18, 2013, its language was amended to specifically require experience in **aeronautical product** manufacturing, as follows:

...

*• civil aviation safety inspectors holding a university degree, college certificate or a current membership in the American Society for Quality Control who have **six (6) or more years of industry experience in the performance or supervision of aeronautical product manufacturing processes....***

...

[Emphasis added]

[...]

*• Les inspecteurs de l'aviation civile titulaires d'un diplôme universitaire ou d'un certificat décerné par un collège, ou qui sont membres de la American Society for Quality Control, et qui possèdent **six (6) années ou plus d'expérience au sein de l'industrie dans l'exécution ou la supervision de procédé de fabrication de produits aéronautiques.[...]***

[...]

[7] It was not disputed that the grievor was a TI-06 civil aviation safety inspector with the employer and that he holds a Bachelor of Arts degree from Queen's University in Kingston, Ontario. Therefore, he clearly met all the other criteria for the terminable allowance, except the one at issue.

[8] The grievor began working for the employer in 1978 as an assistant air traffic controller. In 1981, his job title was changed to operational support specialist (OSS), which he held until he was promoted to operational support supervisor in 1991. The evidence from that period relates to his work with flight progress strips.

[9] In 1992, he moved into a planning officer-systems analyst position and began working on AZRs. In 1996, he moved to NAV Canada as a systems analyst but continued to manage ongoing AZR amendments and enactments in the employer's Ontario region. In 1999, he returned to the employer as a civil aviation safety inspector - aerodromes and air navigation. He held this substantive position until his retirement in 2014.

[10] In April 2010, the grievor learned that a colleague, who was also a civil aviation safety inspector - aerodromes and air navigation, intended to request a terminable allowance based on his software development experience. In December 2010, the grievor learned that his colleague had been granted the allowance, retroactive to his date of hire. The grievor concluded that if software development qualified as manufacturing process experience for the purpose of the terminable allowance, then his experience working with flight progress strips or AZRs, both of which involved manipulating data into a usable tool, should as well.

[11] On February 7, 2011, he asked for the terminable allowance based on his work with flight progress strips from 1981 to 1992 and with AZRs from 1992 to 2011. The employer denied his request.

III. Summary of the evidence about flight progress strips

[12] The grievor explained in detail what he viewed as the manufacturing process for flight progress strips and his role in that process as an OSS and as an operational support supervisor. He testified that the OSSs work on an assembly line, collecting data about planned flights. They use that data to produce flight progress strips.

[13] A flight progress strip is a strip of paper that air traffic controllers use to situate flights and record the instructions that they give to a flight's pilot. Instrument flight rules ("IFR") flights depend on air traffic controllers' instructions to maintain a safe separation between aircraft. They work in teams of two — one controller is

responsible for the radar and communicates with the pilots, the other, known as the “board man”, is responsible for the board containing the flight progress strips.

[14] Geographic locations are called “fixes”. A flight progress strip is created for each fix that an aircraft is expected to pass through along its route. Each strip is delivered to the board man who is responsible for the geographic sector in which that fix is located. Depending on the flight, each sector could need one or more strips for a single flight. For each fix, the flight progress strip contains the aircraft’s call sign, type, transponder code, airspeed, routing, estimated time of arrival, and expected altitude at the fix.

[15] Progress strips for live flights are inserted into strip holders and arranged together on the board, according to the fix. The holders allow for the movement of the strips between different locations on the board, to reflect where the flight is geographically located relative to other flights being controlled. This allows the board man to see at a glance when, and at what altitude, all active flights are estimated to arrive at a given fix. The board man records the actual time of arrival when the pilot reports it.

[16] Flight progress strips are an essential tool for maintaining separation and act as a fail-safe if the radar malfunctions. When flights leave a sector, the strips are archived and act as legal records of the instructions given to the aircraft.

[17] The grievor described what he viewed as the “manufacturing process for flight progress strips”. He said that a team of OSSs manufactured the strips, delivered them to the controllers, and collected them for record-keeping purposes. The process began when the OSS staffing the phones collected the raw data from an air operator or pilot. They would then complete a flight plan form that was either dictated to them by an operator reading off the same form or by interviewing the pilot. The OSSs also received flight plans by other means, such as teletypes, and transcribed them onto flight plan forms.

[18] Once completed, a flight plan form was passed to an OSS responsible for the Joint Enroute Terminal System (JETS) which would populate the radar and indicate the aircraft’s transponder code, which would be added to the flight plan, for inclusion on the flight progress strip. The flight plan form would then be passed to an OSS staffing

the National Flight Data Processing System (“NFDPS”), who would input the information from the flight plan into the NFDPS.

[19] Some elements could be taken directly from the flight plan form, but the routing was more complex. The OSS staffing the NFDPS had to check the proposed routing against a list of preferred and common routings that was kept in a binder maintained by the employer. The OSS would select either a preferred routing, if the flight plan had used one, or a routing that most closely matched the proposed flight plan. Once a routing was entered into the NFDPS, it would generate a list of expected fixes along that routing. The OSS could then manually adjust the fixes to reflect the routing proposed by the air operator or pilot or, if necessary, manually create fixes where none existed, to reflect the flight plan.

[20] In some cases, the OSS would override the flight plan and require the operator or pilot to follow the preferred routing. In this case, the flight progress strips would be marked “Complete Route Clearance”, to ensure that controllers read the complete route to the pilot and received a correct readback of the entire route before the pilot was cleared for takeoff.

[21] Each OSS who worked with a flight plan could correct errors, for example, when the flight plan was communicated over the phone or when the OSS responsible for the NFDPS manipulated the routing. The OSS staffing the NFDPS had the ultimate responsibility to ensure the route’s viability.

[22] In addition to the NFDPS process, the grievor said that for centre-stored flights, flight progress strips were created using different tools. Centre-stored flights were those that were regularly and consistently run by an air operator. Flight progress strips for centre-stored flights were, in the grievor’s words, manufactured using an IBM 1800 punch-card computer.

[23] Once an air operator confirmed that a centre-stored flight was going ahead with no changes, the OSS would operate the IBM 1800 to print the flight progress strips at each of the relevant fixes. If there was a change to a centre-stored flight, the OSS staffing the NFDPS would produce the flight progress strips, in accordance with the NFDPS process.

[24] Eleven OSSs worked in what was called the “back room” on a rotating 3-shift schedule, to staff the control centre 24 hours a day, 365 days a year. The back room operated like an assembly line, with each OSS rotating through the following designated tasks:

- phone positions - collected flight plans and operated the Integrated Communications Control System (ICCS) to communicate with other control centres;
- teletype position - received flight plans by teletype and was responsible for sending important information to other control centres, including in the U.S.;
- JETS position - populated the radar and generated transponder codes;
- OIDS position - input information into the Operational Information Display System (OIDS), which included meteorological information and notices to airmen;
- NFDPS position - processed flight plans into flight progress strips using the NFDPS;
- AMIS position - received military missions and ensured that the NFDPS OSS generated timely flight progress strips for a military flight; and
- VFR - tracked visual flight rules flights using flight progress strips.

[25] The OSSs used both common and specialized tools in their work, including the NFDPS, the ICCS, manual database aids, specialized computers and phones, and teletype machines. The grievor said that they used those tools to, in his words, manufacture flight progress strips and that they also maintained them by repairing the specialized printers and ensuring that databases like the NFDPS were regularly updated to include common routings.

[26] According to the grievor, the OSS position was like that of a factory worker processing large volumes of proposed flight data into a workable format for air traffic control.

[27] The employer agreed that in his capacity as an OSS and briefly as an operational support supervisor at Pearson International Airport in Toronto, Ontario, the grievor worked as part of a team that received information from airlines or aviators, printed

that information onto flight progress strips, and provided a variety of other support services, to facilitate the air traffic controllers' work.

[28] The employer's evidence noted that centre-stored flight plans did not usually require any changes to or further analysis of the information before the flight progress strips were printed. The airline or aviator could store the information on file with the OSS team and contact them only if changes were required. The operational support supervisor created the punch cards on which the centre-stored flight information was kept, and the OSSs fed those cards into the IBM punch card computer that then automatically printed the flight progress strips reflecting the centre-stored flight information. In cross-examination, the grievor agreed that unless the airline called in a change to a centre-stored flight, preparing the flight progress strip for it required only feeding the punch card into the machine.

[29] For other flights, aviators or airlines would contact the OSS team by telephone or teletype, to provide the flight plan and other required information. The OSS's role at that stage was to ensure that the information was correct, record it in the NFDPS, and advise of any required changes.

[30] The employer noted that the grievor acknowledged in his cross-examination:

- that most of the required information, such as the aircraft type and ID and the transponder code, rarely had to be corrected or changed. The most common change required was to the requested routing if a pilot had not requested the preferred routing;
- the preferred routing for flights was published and publicly available in a document called the *Canadian Flight Supplement*, to which aviators had access;
- if routing changes were required, the OSS had access to a physical book with routings and route numbers to generate the appropriate fixes in the NFDPS. The operational support supervisor maintained the book; the OSSs did not and did not create the preferred routings;
- when the OSSs entered a route number from the physical reference book, the NFDPS would auto-populate with suggested fixes. The OSSs would verify if any changes were needed; if so, they could manually manipulate the fixes before printing, and if no changes were needed, they could print the flight progress strip; and

- most of the flights that the grievor dealt with as an OSS were between destinations with control towers that had straightforward or common fixes from the routings maintained in the physical reference book. If a pilot was in a low-density population area with no preferred routing, the OSS could still use the routings book to choose the closest approximation to the proposed route and then make manual changes in the NFDPS to ensure that the fixes were appropriate.

[31] Once a flight was over, the flight progress strips were gathered and counted for statistical purposes. On cross-examination, the grievor agreed that they served no further practical purpose to facilitate safe air traffic control. They were kept for six months for liability reasons in case of an accident, a near-accident, or a complaint.

[32] The grievor acknowledged that several of the OSS roles were not directly related to what he referred to as manufacturing flight progress strips. They provided other essential services to the air traffic controllers, to support and assist them in their task of maintaining safe separation between aircraft.

[33] An OSS job posting dated June 30, 1989, and entered in evidence contained no reference to manufacturing and identified the duties as "... Provid(ing) a support service to controllers, aircraft pilots and other agencies involved in the safe and efficient movement of aircraft...".

[34] An operations support supervisor job posting dated May 17, 1991, described the duties and responsibilities as supervising the OSSs to deliver different services to support the air traffic controllers and made no reference to manufacturing.

[35] An undated Air Traffic Control OSS posting entered into evidence similarly described the duties and made no reference to manufacturing.

[36] In cross-examination, the grievor agreed that none of those postings mentioned manufacturing.

[37] An OSS performance review form referred to "produc(ing) flight progress strips" as a subheading within a broader category of the evaluation of the ability to "provide operational support" to air traffic controllers. It made no reference to manufacturing.

IV. Summary of the evidence about AZRs

[38] From 1992 to his retirement in 2014, the grievor's work included responsibility for AZRs. An AZR is a regulation promulgated under s. 5.4 of the *Aeronautics Act*

(R.S.C., 1985, c. A-2), the basic purpose of which is to restrict development on lands in the vicinity of an airport, to prevent land use that would be incompatible with the safe operation of that airport.

[39] The grievor explained that AZRs are prepared by drawing a series of imaginary surfaces around the airport that will act as height restrictions for development. They include restrictions on land uses that for example could interfere with aircraft communication, allow natural growth that would exceed height restrictions, or attract birds that could create an aviation hazard.

[40] The grievor summarized what he called the "... procedure for the manufacture and enactment of AZRs ..." with reference to the employer's *Staff Instruction*, which set out the step-by-step process as it was at that time and in that region, as follows:

- The proponent requests the enactment or amendment of an AZR.
- The inspector initiates discussions to explain that the proponent will be responsible for all zoning costs and compliance monitoring and helps the proponent complete the AZR requirements form.
- Using the requirements form, the inspector prepares what is termed a "commitment agreement" and a briefing note to the regional director of civil aviation and the employer's zoning and land use officer, which is updated at several stages in the process.
- The inspector manages several internal briefings within the employer.
- The proponent, in consultation with the inspector, contracts with a service provider, usually Public Works and Government Services Canada ("PWGSC") as it was then called, to obtain the necessary documents for the zoning regulation book. The book includes land surveys, existing intrusions, title searches, a draft of the regulation, colour-coded schematics of the surfaces, and legal descriptions of all affected lands. At this stage, the documents are collectively called "zoning instructions".
- The inspector reviews the proponent's draft for compliance.
- The inspector arranges the translation of the zoning instructions and sends them to the Department of Justice's Legislative Services Regulations Unit ("the Regulations Unit"), which uses them to create a discussion draft of the regulations that is then returned to the inspector.

- The inspector arranges for newspaper advertisements and consultations with stakeholders.
- The inspector drafts the *Regulatory Impact Analysis Statement* and sends it to the Regulations Unit, with the final drafting instructions and zoning plans.
- After that pre-regulatory phase, the Regulations Unit prepares a draft regulation, in consultation with the inspector, who then shepherds it through several internal approvals and ultimately sends it to the zoning and land use officer who, in turn, will forward it to the Treasury Board and Privy Council Office. It is published in the *Canada Gazette, Part I*, and then in a local newspaper.
- After the initial publication of the discussion draft, there is a further period of consultations that may lead to changes to either the *Regulatory Impact Analysis Statement* or to the regulation itself. The inspector continues to coordinate responses to issues raised in consultations and coordinates between the proponent, PWGSC, and different offices of the employer.
- The Regulations Unit prepares a further draft, now called a “proposed regulation”, which is submitted for publication in the *Canada Gazette, Part II*.
- The last phase of the manufacturing process is the post-regulatory phase, in which the inspector coordinates the effective implementation and coming into force. This includes procuring a report of existing intrusions that will be grandfathered and updating the legal descriptions of affected lands.
- At this point, the final airport zoning book is published and printed, to be deposited with the relevant land titles office and land registry office and provided to other stakeholders. The AZR is published on the Internet. The zoning plan, developed by the proponent and PWGSC in consultation with the inspector, makes up the bulk of the text of the schedules to the published regulation.

[41] The inspector is the central figure throughout the process of developing and publishing an AZR and manufacturing the airport zoning book. The role involves coordination, project management, and quality control.

[42] The work description for a civil aviation safety inspector - aerodromes and air navigation describes the job duties related to AZRs in the following terms:

...

Leads/manages and guides the airport zoning process from conception to formal approval by the Governor-in-Council. This involves identifying the required steps, consulting with all relevant

stakeholders and making recommendations for approval, through to enactment in law.

...

[43] Under the heading "Skill", it requires the inspector to have the following:

...

Knowledge and skill to interpret technical drawings, survey plans, construction blueprints and topographic charts; to plot geographic coordinates and perform calculations to determine the most restrictive dimensions of protected airspace and zoning surfaces....

...

[44] The grievor explained that it was his job to ensure that all steps were completed accurately. It involved coordinating the stakeholders. His role began with the client request and the product design stage. He helped the proponent airport, which he likened to a customer, to understand the process for obtaining an AZR and gathering the necessary information to complete the requirements form.

[45] He described the airport zoning book as a product that the proponent airport purchases and noted that the regulations are not in force until the publication is deposited in the provincial land titles office. He said that AZRs are unique among federal regulations in that each regulation has an individual proponent airport that requests the promulgation of the regulation and is intimately involved with and responsible for elements of the regulatory process.

[46] The grievor testified that he had a coordinating role with respect to every step of the process laid out in the *Staff Instruction*. While PWGSC carried out the on-the-ground surveying work, he had day-to-day decision-making authority over the ultimate description of the lands. And while the Regulations Unit had the ultimate authority for the legislative drafting, he did the heavy lifting on drafting the schedules to the regulations.

[47] The employer agreed that as a civil aviation safety inspector from about 1992 to 2011, the grievor worked in the process of enacting and promulgating AZRs.

[48] Imtiazali Waljee, Associate Director, Operations, Civil Aviation, testified for the employer. He noted that its *Staff Instruction* sets out a detailed process for enacting and promulgating AZRs. He said that most of the information used by an airport to

complete the template form comes from pre-existing reference documents of the employer that set out standards and recommended practices to guide the proponent airport and the civil aviation safety inspectors. The airport also coordinates directly with the municipality about its long-term development plans.

[49] After the initial form is completed, the next steps in the pre-regulatory process involve completing the initial drafting instructions, preparing and signing the agreements that will guide the process, and commissioning updated zoning plans. The employer noted that the grievor acknowledged the following points in his cross-examination:

- that the zoning and land use officer, the grievor's counterpart at the employer's national headquarters, carries out the final review, approves the commitment agreement, and prepares the *Strategic Environmental Assessment*;
- that surveyors with PWGSC or another third party prepare or update the zoning plans and surveying work;
- that PWGSC translates the drafting instructions; and
- that lawyers from the Regulations Unit prepare the initial draft AZR for discussion and consultation.

[50] Next, the regulatory phase involves publishing the proposed AZR in the *Canada Gazette*. In cross-examination, the grievor confirmed that during this phase, the Regulations Unit lawyers are still responsible for all the actual drafting work and that PWGSC is responsible for any updated zoning or surveying work. The zoning and land use officer is also heavily involved in obtaining approval from the relevant ministerial offices, the Treasury Board, and the Privy Council Office.

[51] Once deposited with the land titles office and land registry office, the approved AZR is published online. The grievor confirmed in cross-examination that the PWGSC prepares or updates the majority of the final regulation's text; that is, the legal descriptions of land set out in the schedules. Mr. Waljee noted that much of the information set out in the schedules, for example the restrictions on approach and transition surfaces, comes from pre-existing employer reference documents and is incorporated by reference into the *Staff Instruction*.

[52] Mr. Waljee described the printed book as a secondary piece to what was published online. Both he and the grievor confirmed that PWGSC was responsible for printing the physical book.

[53] The civil aviation safety inspector's work description contains the following statements of the key activities and responsibilities for the AZR process:

Key Activities:

...

Initiates, manages, plans, organizes, coordinates leads the enactment and follow-up of Federal Airport Zoning Regulations for certificate holders.

...

Responsibilities

...

Leads / manages and guides the airport zoning process from conception to formal approval by the Governor-in-Council. This involves identifying the required steps, consulting with all relevant stakeholders, and making recommendations for approval, through to enactment in law.

...

[54] Like the grievor, Mr. Waljee also described the grievor's role in the AZR process as one of coordination.

[55] The grievor agreed in cross-examination that his work description contained no mention of manufacturing.

V. Summary of the submissions

A. For the grievor

[56] Information was the key input for both manufacturing processes (the flight progress strips and AZRs). For both, the physical products produced by these manufacturing processes were printed products, whose physical raw materials were paper and ink. However, the grievor's involvement in the manufacturing processes had more to do with manipulating and shaping raw information into a usable product.

[57] On a philosophical level, manufacturing is often precisely reshaping a raw material for a particular use. Steel that is bent and cut into a usable shape does not cease to be steel; it becomes the finished product, which is made of the raw material

but can be used for some purpose because of its new shape. Similarly, the flight information on a flight plan is usable for air traffic control because it has been reshaped into a flight progress strip.

[58] The OSSs collected raw material in the form of flight information from pilots and air operators via phones and teletypes. The OSS staffing the NFDPS then applied a process to that raw material by feeding the data into the NFDPS, manipulating it as necessary in accordance with the routing recipes in the route binder, controlling the quality by ensuring that the fixes indicated were sensible, and manually correcting them if necessary.

[59] Then the flight progress strips were printed and delivered using both the hardware and software tools that are part of the NFDPS (i.e., the database and the specialized printers). At the same time, the OSSs applied another manufacturing process, the IBM 1800 punch-card computer, to produce flight progress strips for centre-stored flights.

[60] The result of the process was a physical product, produced in mass numbers — a specialized physical tool used by air traffic controllers, different from the information or flight plan that the OSS initially received as raw material. The physical format of the flight progress strip, achieved through the OSSs' use of machinery and tools, was essential to its function. Air traffic control would not have been able to do its job using the flight plan as it was received by the OSSs. The manufacturing process transformation was necessary.

[61] This process was arranged like an assembly line and functioned around the clock with the division of labour and shift work, which are additional hallmarks of the industrial connotation that may be present in the use of the word “manufacturing”. The grievor's involvement in the flight-progress-strip manufacturing process was directly analogous to that of the grievor in *Lessard v. Treasury Board (Department of Transport)*, 2009 PSLRB 34, as he applied recipes to the raw materials, to achieve the necessary transformation into the finished product.

[62] Mr. Waljee likened the OSS flight progress strip work to copying. The grievor submitted that while that was not accurate, it was also important to note that producing large numbers of similar products to different specifications, using the

same basic process, is precisely what is done in the most archetypical examples of industrial manufacturing.

[63] Mr. Waljee's view was that the flight progress strip was not different from the raw materials used to produce it and that it was merely the same information, arranged in a different format. The grievor's evidence contradicted the notion that the information was not changed; he resisted the suggestion that the OSSs were only rarely required to make changes to flight plan information. If an OSS's role was as simple as printing the same strips for centre-stored flights, there would have been no need for a multi-shift, round-the-clock operation with 11 people per team.

[64] The grievor's role in the manufacturing process for airport zoning books was analogous to that of a project manager, supervisor, or quality control officer in industrial manufacturing. That process began with collecting raw materials in the form of the proponent airport's completion of the requirements form. Those raw materials were then fed through the step-by-step process in the *Staff Instruction*.

[65] The grievor's role was to ensure the quality control of the information on the requirements form and to effectively test the raw materials, to make sure that they were suitable for their manufacturing purpose. From there, he applied a process that made use of the labour and knowledge of other resources, including PWGSC surveyors, Department of Justice lawyers, and others. He had to ensure that the maps and diagrams corresponded properly with the proponent airport's requirements and that the legal descriptions of the lands corresponded with the regulatory requirements. He coordinated several people and tools used throughout the process, maintained a record of what was done, and briefed relevant stakeholders, which was an important quality control or management function.

[66] The airport zoning book is a significant transformation of the initial raw materials. While the requirements form provided the necessary inputs, the zoning book bore no resemblance to the information on the form. It included images and diagrams, legal descriptions of land, and the regulation's text and schedules. Those were created by applying the manufacturing process to the raw materials provided in the requirements form.

[67] The grievor submitted that the employer's main reason for refusing to accept his experience manufacturing the airport zoning books was that he was insufficiently

involved, but Mr. Waljee agreed that his role was analogous to that of a project manager or quality control officer and that such a position in an industrial manufacturing context would qualify.

[68] The grievor acknowledged that the employer was likely correct that generally, a regulatory process is not a manufacturing process but submitted that AZRs are unique regulations and that his role in the AZR process was unique. He said that the AZR process is different because the proponent airport buys and pays for the physical book, which is a necessary tool in the regulatory process.

[69] The grievor requested the terminable allowance after learning that his colleague was granted it based on his software development experience, which is an entirely intangible manufacturing process. His colleague manipulated computer code to create a product and led his teams to convert ideas and specifications into a working product for a market. If software development is manufacturing, so too should be the grievor's printing-type operations. As well, his colleague's software development experience was largely in a project manager role, which was similar to the grievor's role of producing the airport zoning regulation books.

[70] The grievor's experience with the flight progress strip was akin to that of a typesetter and production editor in book manufacturing. In addition to manipulating the data, he operated and maintained specialized tools (the NFDPS and the attached specialized printers), to arrange the finalized information on the strips. That analogy also applies to producing the airport zoning regulation books, although for that activity, the grievor's position was more akin to that of a supervising or managing editor monitoring the manufacturing process while also handling other elements of the operation.

[71] Even the most archetypical manufacturing process involves steps in which the only input is information and the worker's entire role is manipulating that information, to ensure that it serves the purpose of the finished product. That occurs in aeronautical product manufacturing, in which key steps in the overall manufacturing process for an aircraft include installing and customizing onboard software. The same is true in car manufacturing.

[72] The grievor's manufacturing process experience is like that of a worker who controls a robot in an industrial manufacturing operation and who manipulates and

inputs information, which is then operationalized to control tools that actually build the product. That is akin to his role operating the NFDPS, a less-sophisticated machine, into which he input the information necessary for the machine to create the finished product for the air traffic controllers.

B. For the employer

[73] The employer submitted that the grievance should be denied because there is no reasonable interpretation that would have the grievor's work experience qualify as "manufacturing" within the meaning of Appendix P. The evidence did not demonstrate that he worked with "raw material" in an environment akin to an "assembly line" or a "factory" to "manufacture" products in the sense that those words are commonly understood. On the contrary, the evidence revealed a white-collar professional working as part of a team in an office setting, to provide services to aviators and airports.

[74] There was no evidentiary basis for the grievor's argument that the AZRs are unique based on the suggestion that the proponent airport is effectively "buying" a product. To the contrary, Mr. Waljee's testimony was clear that the employer's entire *raison d'être* is to promote programs, policies, and **regulations** to foster a safe, efficient, and environmentally responsible transport system in Canada.

[75] While the grievor clearly played an essential role in supervising the development and enactment of AZRs, it strains credulity to characterize supervising a regulatory drafting process as "manufacturing process experience". Referring to steps in the regulatory enactment process as "product development" or "design" does not turn the process into a manufacturing process.

[76] As for flight progress strips, the grievor acknowledged that he did not change the raw data at all in many cases, such as for centre-stored flights. Unless there were changes, such as a different aircraft, printing the flight progress strip simply required inserting a punch card into a machine. Even when aviators contacted the OSSs directly, the grievor acknowledged that the information that they provided did not always require making a correction or change, and if none was needed, he generated the flight progress strip by simply verifying the information and entering it into the NFDPS. Even if changes were needed, he would refer to a book that his supervisor maintained that contained common routings, which would then auto-populate in the NFDPS with

suggested fixes. The grievor was not inventing or creating any of the preferred routing information.

[77] The grievor's attempt to characterize his workplace as an "assembly line" or a "factory" was not borne out by the evidence. He admitted that several of the OSS roles, in particular the JETS, ARTCC (Air Route Traffic Control Centre) OIDS, and ICCS roles, were not directly involved in what he described as "manufacturing" flight progress strips. Those positions supported the air traffic controllers in a variety of other ways.

[78] The documentary evidence also supports the conclusion that the grievor provided a service to aviators, akin to the landing instructions described in *Lodge v. Treasury Board (Department of Transport)*, 2021 FPSLREB 5. The job postings and performance evaluation related to the OSS role refer to a support service provided to aviators; none refer to manufacturing work.

[79] The landing instructions in *Lodge* were published and served a durable purpose after they were written, while the flight progress strips were saved only for data-collection purposes or in case of a complaint or collision. Given that, the grievor's work appears even less like manufacturing than the work described in *Lodge*. It is also unreasonable to analogize printing flight progress strips to creating onboard software for cars or planes.

[80] The grievor's work was technical and highly skilled, but it strains credulity to characterize a white-collar office job providing a service to aviators as "manufacturing process experience". This workplace is not a factory or an assembly line. It is an office, where white-collar workers provide a variety of support to air traffic controllers, to ensure the safe operation of flights. The grievor's efforts to characterize his work as "collecting (or) testing raw materials" or being on an "assembly line" should not be allowed to overwhelm common sense. There is no reasonable interpretation that would see this work as manufacturing within the meaning of the collective agreement.

[81] In the absence of collective agreement definitions, and looking at relevant statutory definitions and dictionary definitions, it is clear that none of them is a good fit to describe the grievor's work.

[82] The grievor argued that his colleague's successful request for the terminable allowance should support his request, but this evidence was of minimal relevance and

offered little to no assistance in this interpretative exercise. The grievor did not call his colleague as a witness, so the Board heard no direct evidence about his request for the allowance or about his work experience, upon which it could draw any comparisons or use as a lens through which to interpret the phrase “manufacturing process experience”.

VI. Reasons

[83] To determine this matter, I have applied the following principles of collective agreement interpretation:

- words are to be given their ordinary meaning;
- provisions are to be read as a whole;
- if a plain-language approach could lead to two or more linguistically permissible interpretations, the Board can be guided by the purpose of the provision, the reasonableness of each possible interpretation, and whether one interpretation would lead to an absurd result;
- when a right to a monetary benefit is asserted, a grievor must show that precise language exists that imposes the obligation to pay it;
- the meaning of words in a statute may be considered as an aid to interpretation. The existence of a statutory definition may give rise to a presumption that clear language will be required to override the same meaning being given to a term in a collective agreement; and
- the Board may consider dictionary definitions to verify the meanings to be given to words only as interpretative aids, not as binding authority.

A. The flight progress strips

[84] The grievor explained that flight progress strips were small strips of paper containing aircraft identification and flight plan information. As an OSS, he received and verified proposed flight plan information from pilots or air operators. He ensured that a proposed flight plan was a preferred route, or he substituted an alternate safe and appropriate route and put all the information on a flight progress strip.

[85] For centre-stored flights, he recorded any required change on the flight progress strip, but typically none were needed, and he simply input the information into the NFDPS by way of a punch card. He placed the flight progress strips into strip holders

and put them on a board so that geographical locations called “fixes” could be easily seen and aircraft separation could be safely maintained.

[86] Clearly, those tasks provided an invaluable service to the air traffic controllers. However, working with information, making changes to it, and then displaying it in a more useful way for the controllers is not manufacturing. Manufacturing means creating something new out of raw materials.

[87] The grievor’s argument essentially consisted of describing an information support service for air traffic controllers in detail and ascribing words that are commonly associated with manufacturing processes to different aspects of that service. Using words that are typically used to describe aspects of a manufacturing process and applying them inappropriately to an information support service does not turn that service into a manufacturing process.

[88] Referring to the initial flight plan information phoned in by the pilots as “raw material” does not turn a flight plan into a raw material. It is information from pilots taken from publicly available sources or, in the case of centre-stored flights, held on file. Nor is a flight progress strip a manufactured final product. It is a strip of paper on which the grievor printed aircraft identifying information and displayed it on a board in such a way as to show the aircraft’s location in relation to other aircraft.

[89] As an OSS, the grievor provided a vitally important information support service to air traffic controllers, but he was not engaged in a manufacturing process.

B. The AZRs

[90] Similarly, the AZR process that the grievor described was clearly a regulatory process that he coordinated, managed, and facilitated. It was not a manufacturing process.

[91] Just as a flight plan phoned in by a pilot is not raw material, neither is a request by a proponent airport for an AZR. Nor is any of the work done by the parties manufacturing work; for example, PWGSC’s surveying, or the Regulations Unit lawyers’ regulation drafting.

[92] As with the physical strips of paper on which flight plan information was printed, the grievor sought to bolster his argument that the AZR process constituted

manufacturing by referring to the fact that a physical book was printed and published at the end of the process. Even if he was involved in the actual printing of the book (which he was not), the fact that a book is printed as part of a process does not turn a regulatory process into a manufacturing process.

[93] The purpose of a book in the AZR process is the same as that of a flight progress strip — it is to contain and display printed information. In both cases, the grievor's work was not to manufacture the paper slips or the physical books but rather to work with the information contained in or on them.

[94] The grievor's AZR work could be called project management or facilitation or the coordination of a regulatory process, but he did not manufacture AZRs or manage a manufacturing process.

C. Statutory and dictionary definitions of “manufacture”

[95] The statutory scheme that applies to the grievor's workplace defines manufacturing in s. 101.01(1) of the *Canadian Aviation Regulations* (SOR/96-433) as follows:

...
manufacture means the making, assembly and fabrication,
other than the fabrication of parts as part of a repair, of
*aeronautical **products**, and includes, in the case of newly*
manufactured aircraft, any work performed on an aircraft prior to
the issuance of the first certificate of airworthiness or export
certificate of airworthiness by the manufacturer

...
[Emphasis added and in the original]

[96] Both parties submitted dictionary definitions of the term “manufacture”, such as:

[From the *Merriam Webster* online dictionary:]

...
1: to make into a product suitable for use
2a: to make from raw materials by hand or by machinery
b: to produce according to an organized plan and with division
of labor [sic]
...

[From the *Collins* dictionary:]

...

- *to make by hand or, esp., by machinery, often on a large scale and with division of labor [sic]*
- *to work (wool, steel, etc.) into usable form*
- *to produce (art, literature, etc.) in a way regarded as mechanical and uninspired*

...

[From the *Oxford English Dictionary*.]

...

- *To make (a product, goods, etc.) from, of, or out of raw material; to produce (goods) by physical labour, machinery, etc., now esp. on a large scale.*

...

[97] The grievor's work experience, as described in detail in his evidence, did not fit either the statutory or the dictionary definitions of manufacturing. Those definitions, as well as common language usage, all lead to the same conclusion. The grievor did not make, assemble or fabricate a product. He did not, by hand or machinery, take raw materials and make them into a product suitable for use.

D. Grievor's colleague received terminable allowance for software development

[98] The grievor argued that his colleague's receipt of the terminable allowance for his software development work should support the grievor's request because like his work, his colleague's work produced an intangible product. I agree that in theory, this might have been a relevant example to consider as possibly showing a past practice of the employer. However, it would depend on whether the evidence demonstrated that his colleague's work was analogous to the grievor's work with flight progress strips or AZRs.

[99] The only evidence before me on this point was the colleague's written request for the terminable allowance, in which he described software development as being similar to a traditional manufacturing process in that it consisted of initiation, design, production, testing, and deployment. On the face of it, that would suggest that his work was quite different from the grievor's work, which did not follow that kind of process.

[100] However, the grievor's colleague did not testify about his actual work process. And when Mr. Waljee was asked whether he disputed the evidence entered about that terminable allowance request, he indicated that he had no knowledge of that case and could not speak to it. He said that someone else made the decision in that matter. No evidence was entered with respect to the basis on which the employer granted that request for a terminable allowance.

[101] Accordingly, there was simply insufficient evidence for the Board to determine whether the colleague's work was analogous to the grievor's work and whether the granting of that terminable allowance was a relevant past practice to be considered.

E. The jurisprudence

[102] The Board has considered the application of Appendix P in this workplace in two prior decisions, first in *Lessard*, in 2009, and more recently in *Lodge*. In *Lodge*, the Board considered the reasoning in *Lessard* and concluded that it was wrong. The grievor urged the Board to follow *Lessard*, and the employer argued for the approach in *Lodge*.

[103] The employer noted the striking factual similarities of *Lodge*, in which the grievor was also a TI-06 civil aviation safety inspector. She designed instrument procedures that were published in the *Canada Air Pilot* manual and prepared landing and takeoff instructions to ensure the safety of Canadian pilots and travellers. Her duties included the following:

- consulting certain policies and criteria when designing instrument procedures;
- ensuring that all specifications were met and that her approaches were as simple as possible for pilots;
- speaking with stakeholders, to build external factors into her landing-approach designs;
- researching radio frequencies and altimeter sources and validating the data, to ensure that her maps were reliable guides for pilots;
- building redundancy planning into her work; and
- reviewing relevant updates and permit applications that might impact her instrument procedures.

[104] In *Lodge*, the Board considered the defined meaning of words in the statutory framework applicable to the workplace, as well as dictionary definitions and common sense, to hold that Ms. Lodge was "... creating knowledge related to instrument procedures for landings ... which is then prepared by her employer to be offered as a service to aviators."

[105] The Board expressly disagreed with the submission that she was "inventing" landing instructions and therefore was engaged in manufacturing. It found that while Ms. Lodge's work was highly skilled and valued, it was absurd to suggest that developing instrument procedures for landings, which her employer then prepared to offer as a service to aviators, was manufacturing.

[106] The grievor's arguments as to why his work with flight progress strips should be considered manufacturing were similar to Ms. Lodge's arguments. And, with respect to the AZRs, he occupied the same position as she did, and there were considerable similarities in their job duties. They both prepared technical written documents that were subsequently published online or in print.

[107] The work that the grievor performed was closely analogous to the work that Ms. Lodge performed. They both worked with technical information, to provide a support service to aviators or airports. Neither was engaged in manufacturing; that is, making, assembling, or fabricating something out of raw materials.

F. Aeronautical manufacturing experience

[108] Another issue raised before me was whether Appendix P, as it was when this grievance was filed, required the manufacturing process experience to be **aeronautical** manufacturing experience. The language of Appendix P did not specify that at the time, but it was added later.

[109] On that language, in *Lessard*, the Board found that the required manufacturing process experience was a more general requirement that could be found in other fields, that it did not necessarily have to be aeronautical manufacturing experience. It found that Mr. Lessard's experience creating solutions and compounds in Petri dishes constituted manufacturing process experience for the purposes of Appendix P.

[110] However, in *Lodge*, the Board found that *Lessard* was wrongly decided and absurd on that point, and it found that although Appendix P's language had been clarified to specifically state the aeronautical requirement, it had always been the intent of Appendix P. The Board in *Lodge* did not agree with *Lessard* that following recipes to create compounds and solutions in Petri dishes constituted the type of experience that Appendix P required, even before the language specifying aeronautical experience was added.

[111] However, *Lodge* also found that Ms. Lodge's work was not manufacturing of any kind. It did not turn on a finding that she lacked **aeronautical** manufacturing experience but rather on the basis that she provided an information support service to pilots and airports, which was not manufacturing.

[112] I agree with the Board's conclusion in *Lodge* that Ms. Lodge's work did not constitute manufacturing of any kind, and I have reached the same conclusion in this case with respect to the grievor's work with flight progress strips and AZRs.

[113] As the evidence did not show that the grievor had manufacturing process experience of any kind, I need not address the issue of whether the version of Appendix P in place when this grievance was filed required aeronautical or more general manufacturing process experience. The grievor had neither.

[114] I find that neither the information support services that the grievor provided to air traffic controllers with flight progress strips nor the AZR regulatory process that he coordinated, constituted the manufacturing process experience required to receive the terminable allowance set out in Appendix P of the collective agreement.

[115] For all of the above reasons, the Board makes the following order:

(The Order appears on the next page)

VII. Order

[116] The grievance is denied.

April 10, 2025.

**Steven B. Katkin,
a panel of the Federal Public Sector
Labour Relations and Employment Board**