

**IN THE MATTER OF AN ARBITRATION**

**B E T W E E N:**

**NAV CANADA**

**(“the Employer”)**

**- and -**

**AIR TRAFFIC SPECIALISTS,  
CAW-CANADA LOCAL 2245**

**(“the Union”)**

**AND IN THE MATTER OF A GRIEVANCE RELATING TO PROFICIENCY  
CHECKS**

**ARBITRATOR:** Kenneth P. Swan

**APPEARANCES:**

For the Employer:

Jacques Emond, Counsel

Kecia Podetz, Counsel

Doug Robertson, NAV CANADA

Anita McDowell, Labour Relations

Dean Edwards, ATS Operations and Development

Craig Brown, Manager, FSS and ATOS Procedures

Larry Boulet, Director, ATS Standards, Procedures and Operations

For the Union:

Ron Smith, National Representative, CAW-Canada

Joel Fournier, Labour Relations, CAW-Canada Local 2245

Derek Yakielashek, President, CAW-Canada Local 2245

Stephen Shortt, Flight Service Specialist, Kingston, Ontario

## **AWARD**

A hearing in this matter was held in Ottawa, Ontario, on November 10, 2004. At the outset of the hearing, the parties were agreed that the Arbitrator had been properly appointed pursuant to the collective agreement, and that I had jurisdiction to hear and determine the matters at issue between them.

There are several grievances relating to proficiency checks which have been consolidated before me for hearing. The representative grievance actually presented was that of Mr. Stephen Shortt, a Flight Service Specialist (FSS) in Kingston, but the parties have agreed to have all of the matters determined on the basis of the facts in Mr. Shortt's case, since all of the grievances raise the same issue of interpretation of the collective agreement.

The claim made in all of the grievances relates to clause 35.03 of the collective agreement. That provision is as follows:

### **35.03 On-the-Job Training Allowance**

When a Flight Service Specialist (FSS) in an operating unit is assigned to provide on-the-job training to an FSS who requires training to operate at that unit, the trainer shall be entitled to receive \$8.50 per hour (to be included in pensionable earnings) for each complete hour during which he or she provides such training.

Flight Service Specialists work at nine Flight Information Centres (FIC) and 63 Airport Advisory Centres (AAC) across the country. They perform a number of functions which are described in the position profile as facilitating "the safe and expeditious movement of air traffic by analyzing, interpreting, integrating and providing operational aviation safety information to pilots and other operational personnel". There

are two classifications in the FSS area, the Specialist classification, and the Team Supervisor classification. Both are in the bargaining unit and covered by the collective agreement.

The Team Supervisor position profile includes a duty described as follows: “conduct proficiency checks of operational staff per ATSAMM requirements”. The ATSAMM is the Air Traffic Services Administration and Management Manual, which is addressed to Managers of employees in the FSS category. Section 160 of the ATSAMM is, in relevant part, as follows:

**160 PROFICIENCY AND TRAINING OF  
ATS PERSONNEL**

**161 PROFICIENCY OF ATS  
OPERATIONAL PERSONNEL**

**161.1**

Managers shall ensure that proficiency standards are:

A. established and maintained to incorporate required operational skills and knowledge levels within guidelines provided by Head Office;

B. achieved for initial unit qualification, and requalification following an absence from operational duties for an extended period; and

C. maintained by operational personnel.

**161.2**

Managers shall ensure that operational personnel have demonstrated their achievement of the unit proficiency standards, at least once within the preceding 6 months or following an absence from operational duties

for an extended period, in the following areas:

A. operational skills based on the task analysis for the operational position as identified on the appropriate checklist.

B. operational communication skills based on established and published communication procedures and phraseologies for the duties of the operational position as identified on the appropriate checklist.

C. as applicable, VDF services operational Skills

### **161.3**

The unit manager shall ensure that formal observation of operational skills application by ATS personnel is completed:

A. by the immediate supervisor or a competent delegated evaluator;

B. through direct observation in the normal work environment;

C. by using the appropriate checklist for the position;

D. for a period of not less than one hour and with the major items of the checklist observed; and

E. by a debriefing following completion of each formal observation.

### **161.4**

The unit manager shall ensure that formal monitoring of the application of operational communication skills by air traffic controllers and flight service specialists is completed:

A. by the immediate supervisor or delegated evaluator;

B. through review of a twenty minute condensed recording of operational communications in the normal work environment;

C. by using the operational communication skills report, and recording discrepancies with the appropriate MANOPS references; and

D. by a debriefing for each formal monitoring.

**161.5**

Managers shall ensure that the immediate supervisor or delegated evaluator:

A. prepares a short description of each discrepancy noted; and

B. concludes each debriefing with an agreement on corrective measures together with follow-up action for each discrepancy identified.

**161.6**

Managers shall ensure that operational personnel demonstrate that their operational knowledge meets the unit operational knowledge requirement, by successfully completing the applicable knowledge verification test for the operational position:

A. at least once during the preceding 12 months;

B. more frequently if deemed necessary by unit management; or

C. if returning to operational duties following an absence for an extended period.

**161.7**

ATC Unit Managers shall ensure that non-radar procedures are reviewed at least once during

the preceding 12 months and that the applicable radar failure emergency procedures are contained in the sector manual. Operational proficiency, for operational personnel continuously providing services in a radar environment, is demonstrated through direct observation by the immediate supervisor or delegated evaluator of application during:

- A. regular rotation through non-radar positions;
- B. operation under actual radar failure; or
- C. operation in a simulated non-radar position.

[Notes, charts and references are omitted.]

Similarly, the Manual of Operations (MANOPS) addresses an obligation to demonstrate proficiency to each individual FSS employee, as follows:

## **129 OPERATIONAL PROFICIENCY**

### **129.1**

Demonstrate that your performance of operational duties meets the unit proficiency standards.

### **129.2**

Demonstrate, at least once in the preceding six months or following an absence from operational duties for an extended period, your ability to achieve or maintain, as appropriate, performance that meets the unit proficiency standards in the following areas:

- A. operational skills based on the task analysis for the operational position, as identified in the appropriate checklist;
- B. operational communications skills based on the established and published communications procedures and

phraseologies, for the operational position as identified in the appropriate checklist; and

C. DF services operational skills, as appropriate.

### **129.3**

Demonstrate that your operational knowledge meets the unit proficiency standards by successfully completing the knowledge verification test for the applicable operational position:

A. at least once during the preceding twelve months;

B. more frequently if deemed necessary by the unit manager; or

C. upon returning to operational duties following an absence for an extended period.

[Notes and references are omitted.]

The requirement to demonstrate proficiency on a periodic basis applies not only to the Specialists, but also to the Team Supervisors. In the FICs, which are larger establishments, Team Supervisors carry out skills observation and monitoring on each other, but at the AACs, there is typically only one Team Supervisor on staff. As a consequence, the formal observation of operational skills of the Team Supervisor as required under section 161.3 A. must be carried out by “a competent delegated evaluator”, who is normally an FS Specialist employed at the site.

On-the-job instruction (OJI), the activity which is the subject of the premium described in clause 35.03, in general takes place when an employee is newly arrived at a site, and must be trained to the appropriate standard to carry out the functions to be assigned. The requirement for such training comes from the Canadian Aviation Regulations (CARs). Section 8.01.09, which deals with training, as is follows:

*Training and Competency of Flight Service Specialists*

**801.09** (1) No holder of an ATS operations certificate who operates a flight service station shall permit a person to act, and no person shall act, as a flight service specialist unless the person

(a) has successfully completed training that has been accepted by the Minister in the performance of the functions of a flight service specialist; and

(b) has been certified by the holder of the certificate as being competent to perform those functions.

(2) Subsection (1) does not apply in respect of a person who, under supervision, acts as a flight service specialist while undergoing

(a) instruction, training or testing in respect of flight service specialist certification; or

(b) flight service station familiarization in the course of the person's employment.

(3) The holder of an ATS operations certificate who operates a flight service station shall

(a) maintain, for each person who acts as a flight service specialist, a training record showing the place where and the date on which the person successfully completed the training referred to in paragraph (1)(a); and

(b) at the request of the Minister, provide the Minister with a copy of the training record of any person acting as a flight service specialist at that flight service station. SOR/2002-352, s. 7.

The “holder of an ATS operations certificate” described here is the Employer; the Regulations apply to the Employer and require it to ensure that the training

has taken place as required. Each unit has an FSS Unit Qualification Training Program (UQTP) which is the template for the training which must take place.

In order to be assigned to on-the-job training functions under clause 35.03, an FSS must receive formal training in order to deliver on-the-job instruction; the training takes place at the NCTI establishment in Cornwall, Ontario, and lasts for five days. Thereafter, the employee is required to do refresher training on a three-year cycle in order to maintain the OJI qualification.

There is no dispute that on-the-job instruction, when given to new employees, employees who have transferred from another unit, and to employees who have been assigned for remedial training as required, attracts the training allowance in clause 35.03. The only issue is whether the performance of proficiency checks, including the operational skills observation, constitutes training as well.

Mr. Larry Boulet, the Director of ATS Standards, Procedures and Operations, testified about the differences he perceived between on-the-job instruction and operational skills observation. He prepared a chart contrasting the two functions, which was in evidence at the hearing, and discussed it in considerable detail. Some of the distinctions which he raises are administrative only, but some of them are a matter of considerable substance. I shall review those which seem to me to be the most important.

The first critical difference is that in on-the-job instruction actual training is provided to the trainee. In operational skills observation, there is only observation while the observed specialist carries out his or her normal functions “live” on the job. Mr.

Shortt suggested that there was training involved, in that the observer might identify a deficiency, and then give advice as to how to correct that deficiency. Mr. Boulet, however, countered that minor corrections of that sort did not constitute training, and that if actual remedial training were required, it would be scheduled and an OJI-qualified instructor would be assigned to perform it with appropriate premium payment.

The second distinction is that performing on-the-job instruction requires the formal training already described above, whereas no formal training is required for an observer. Mr. Shortt acknowledged that he had seen operational skills observation performed by specialists who were not certified as OJI instructors.

The OJI training program follows the Unit Qualification Training Program (UQTP), while the operational skills observation involves only a checklist. Mr. Shortt's testimony was that the skills being assessed were essentially the same, and I think that he is probably correct in this, based on my review of the materials. I note, however, that the assessment is only one small part of the OJI training process, and even if that small part is similar to the operational skills observation checklist, there are still very substantial differences between the functions carried out by those involved in the two procedures.

The most critical difference, in my view, is that an OJI trainee does not have a valid current authorization to work alone at the unit. That means that at all times during the OJI, it is the OJI instructor who is actually responsible for the operational functions being carried out. While the trainee may actually perform those functions, the trainee is acting under Canadian Aviation Regulation 801.09(2), quoted above, and is working only under supervision while undergoing "instruction, training or testing in

respect of flight service specialist certification, or flight service stations familiarization in the course of the person's employment". The specialist being observed in the course of operational skills observation, on the other hand, is currently qualified to work alone at the unit, subject only to the need to have a current proficiency check, which would include operations skills observation.

Mr. Shortt suggested that the person being observed in fact somehow lost the ability to work alone at the outset of the operational skills observation, and that the observer somehow assumed responsibility in exactly the same way as an OJI Instructor does during the hour or so that the operational skills observation requires. With respect, I can see no justification for that conclusion anywhere in the documentation which has been provided. Certainly the excerpt from CARS set out above does not suggest that there is any such loss of certification upon undergoing operational skills observation.

In all of the circumstances, I have concluded that the operational skills observation and the other proficiency checks are not the same as what is involved in OJI training. The differences identified in the Employer's evidence are real and significant, and the time required for the proficiency checks is relatively limited. In my view, carrying out proficiency checks on a Team Supervisor does not constitute on-the-job training pursuant to clause 35.03, and thus does not attract the premium specified.

The Employer suggests that what is involved is actually part of the FS Specialist position profile, being subsumed in the general concept of supplementary duties as assigned. In my view, given that conducting proficiency checks is a specified duty for the FS Team Supervisor, but not for the FS Specialist, this is actually an

assignment of the duties of the higher classification for the period of time necessary to carry out the observation.

Such an assignment is specifically authorized by clause 31.03. That provision clearly recognizes that the Employer may assign the duties of a higher classification, but payment at the higher rate only takes place when those duties are assigned and performed for at least four consecutive working days. Since the time involved here is typically periods of an hour or two at a time, the premium payment contemplated for assignment of work of higher duties is not payable.

In the result, therefore, I have come to the conclusion that the grievance must be denied.

DATED at TORONTO this 25th day of January, 2005.

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Kenneth P. Swan - Arbitrator