

IN THE MATTER OF AN ARBITRATION

B E T W E E N :

AIR CANADA

- and -

CAW-CANADA AND ITS LOCAL 2002

Mandatory Retirement Grievance

MARTIN TEPLITSKY, Q.C.
Arbitrator

APPEARANCES:

On behalf of Air Canada: Fred Headon

On behalf of CAW: Lewis Gottheil

Hearing held via telephone conference on March 10, 2011

The Union seeks interim relief in the nature of reinstatement pending the outcome of proceedings before the CHRC or the CHRT.

My jurisdiction is conceded. The Union must satisfy me that there is an arguable case; the balance of convenience favours the grievors; and there will be irreparable harm.

A brief examination both of the Provincial sector and recent developments in the Federal sector, disclose an arguable case in support of rejecting mandatory retirement. There is no legitimate employer interest awarded if these employees are reinstated. A reinstatement limits the potential for damages, i.e., “armchair money”, the payment of which should be avoided whenever possible. The balance of convenience favours interim reinstatement. Finally, the benefits of work extend beyond monetary remuneration. There are psychological and emotional benefits which are important. Their loss constitutes irreparable harm.

In light of the above, I order that:

- (a) Air Canada offer to continue to employ any CAW-Canada bargaining unit employee (other than employees having chosen retirement phase-in as of the date of this order) wishing to continue to work for Air Canada after having reached age 65;
- (b) Air Canada offer to re-employ any former CAW-Canada bargaining unit employee who retired from Air Canada at age 65 (other than employees having chosen retirement phase-in prior to reaching age 65) after March 10, 2010;
- (c) Air Canada offer reinstatement to their previous employment status, immediately prior to retirement to:

- (1) Catalina Harder (Vancouver)
- (2) Louise Charlebois (Dorval)
- (3) Ashok Tiwari (Pearson)
- (4) Jaura Suresh (subject to meeting the usual requirements of fitness to perform his job)

(d) the continuation of the employment of any employees pursuant to paragraph (a), the re-hiring of any employees pursuant to paragraph (b), and the reinstatement of the persons mentioned in paragraph (c) is on an interim basis pending the disposition of their respective proceedings before the CHRC or the CHRT (as the case may be) or the ratification of permanent changes to the applicable collective agreement permitting employees in the CAW-Canada bargaining unit to work past age 65, whichever occurs first. The employment of these employees will continue, past the interim period, in accordance with the ruling(s) disposing of their complaints and/or the ratified changes to the applicable collective agreement.

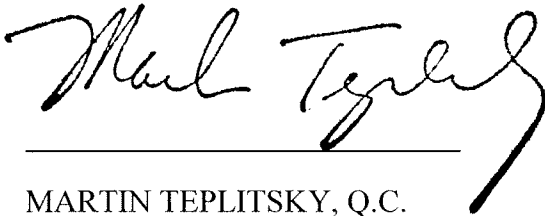
(e) Air Canada and CAW-Canada are directed to meet forthwith to resolve any issues regarding benefits/compensation for the aforesaid employees;

(f) Subject to a final judgment in the Vilven and Kelly matter in the Federal Court of Appeal, or the Supreme Court of Canada regarding the constitutionality of Section 15(1)(c) of the CHRA, any rule relating to mandatory retirement at age 65 for CAW-Canada bargaining unit employees is declared void and contrary to law. Should either Court uphold s. 15(1)(c), the parties will be entitled to return before me to have this issue re-considered.

I refrain from making an order in paragraphs (a) and (b) above with respect to employees

having chosen retirement phase in without prejudice to the right of the parties to return and seek a fresh order with respect to these same employees.

DATED the 28th day of March, 2011.

A handwritten signature in black ink, appearing to read "Martin Teplitsky", written over a horizontal line. The signature is cursive and extends below the line.

MARTIN TEPLITSKY, Q.C.

Arbitrator