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IN THE MATTER OF A MEDIATION-ARBITRATION

BETWEEN:

THE CANADIAN FEDERAL PILOTS ASSOCIATION ("CFPA")

and

TREASURY BOARD

Mediator-Arbitrator: The Honourable George W. Adams, Q.C.

For CFPA: Greg Holbrook
Ron Young
Dave Dixon
Guy Langevin
Gary Ertel
Deb Martin
Dave Granger
Bob Grant
Gord Manual

For Treasury Board: Frank Jamieson

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BETWEEN:

THE CANADIAN FEDERAL PILOTS ASSOCIATION ("CFPA")

and

TREASURY BOARD

**RE: SUPPLEMENTARY AWARD CONCERNING THE MEANING AND
IMPLEMENTATION OF A MEDIATION-ARBITRATION AWARD
DATED MARCH 21, 2003**

Mediator-Arbitrator: The Honourable George W. Adams, Q.C.

Submissions in writing:

For CFPA: Greg Holbrook

For Treasury Board: Marc Thibodeau

Supplementary Award

By award dated March 31, 2003, I made, in part, the following decision:

1. Restructure
 - a) Effective January 26, 2001, all classifications shall be modified by adding a step to the top and removing the bottom step
 - b) Effective January 26, 2002, a step shall be added to the top of the CAI-2 classification and a step removed from the bottom
 - c) Effective January 26, 2003, a step shall be added to the top of the CAI-3 classification

2. General Wage Increase

The following general wage increases shall be applied to salaries after each restructure provided for in paragraph 1 above:

- 3.2% - effective January 26, 2001
- 2.8% - effective January 26, 2002
- 2.5% - effective January 26, 2003

CFPA complains that Treasury Board has wrongly purported to interpret and to implement paragraphs 1(a) and (b) by the following Employer "pay notes" 2,3,4 and 5:

PAY NOTES

2. Effective January 26, 2001, prior to any other pay revision which occurs on that date, an employee shall be paid in the "A" scale of rates which is immediately below the employee's former rate of pay, or if there is no such rate, to the rate of pay in the "A" scale of rates which is closest but not less than the employee's former rate of pay.
3. Notwithstanding Pay note 2, an employee at levels CAI-1 to CAI-5, ETP-1 and ETP-2, and HPS-1 and HPS-2 who have been at the maximum of their salary range for 12 months or more on January 26, 2001, will move to the new maximum rate of pay effective January 26, 2001.
4. Effective January 26, 2002, prior to any other pay revision which occurs on that date, an employee at level CAI-2 shall be paid in the "C" scale of rates which is immediately below the employee's former rate of pay, or if there is no such rate, to the rate of pay in the "C" scale of rates which is closest but not less than the employee's former rate of pay.
5. Notwithstanding Pay note 4 an employee at level CAI-2 who have been at the maximum of the salary rate for twelve (12) months or more on January 26, 2002, will move to the new maximum rate of pay effective January 26, 2002.

CFPA complains that the approach denies most employees the immediate 2.85% intended by the restructure (i.e. all steps increase at a uniform 2.85%) and alters the relativity within the employee group. The approach, it is argued, was not raised with CFPA during the proceedings and, indeed, the restructure was resisted by Treasury Board because a 2.85% wage increase associated with a full restructure of a classification was not justified in addition to the general wage increases. CFPA also points out that the approach is inconsistent with this employee group's recent 1999 pay note experience which read:

Effective October 26, 1999, prior to any other pay revision which occurs on that date, an employee shall be paid in the "B" line at the rate of pay which is immediately higher than the employee's rate of pay as of October 25th, 1999.

Finally, CFPA argues that if the award intended the complex formula proposed by Treasury Board, effectively downgrading most of the employees, it would have been explicit.

Treasury Board replies that the award is clear that steps are to be added and removed but nowhere does it expand this restructure of the pay scales to include immediate movement of the employees with the structure. Had the latter been intended, the award would have been specific. It is pointed out that the implementation of the award is consistent with the approach adopted by the Employer in 48 of the 52 restructures resulting from collectively bargained agreements since 1997. The other 4 cases, which included the last collective agreement with this group, were implemented differently due to the introduction of specific language to deviate from the standard approach to restructuring (i.e. the 1999 pay note). Treasury Board also observes that when steps were added to the levels CAI-3 to 5 and ETP-1 in 1989 the pay notes describing the implementation of the restructure only provided for the immediate movement of employees who had been at the maximum of the structure for more than twelve months. As for any disrupted relativity, Treasury Board argues that most such modifications yield different levels of benefit for different employees as did the instant award in extending the reach of the Extra Duty Allowance.

CFPA replies that the 1989 collective agreement reference does not recognize that the type of restructuring there was different in that there was an expansion of the scales to include additional steps not one where the number of steps remained the same. It states that of particular note was the 1989 expansion of the CAI-2 scales in a manner that all employees received immediate benefit. Additionally, observes CFPA, if one examines the entire pay table and notes, it can be seen that all employees received increases on the effective dates and no employee was moved to a lower step in the scale of rates.

Accordingly, CFPA believes that the most efficient solution would be a modification of the employer's pay notes as follows:

1. Delete the proposed pay notes 2 and 3 and substitute them with language similar to that used by the employer in our previous contract such as:

"Effective January 26, 2001, prior to any other pay revision which occurs on that date, an employee shall be paid in the "A" scale of rates at the rate of pay which is immediately higher than the employee's rate of pay as of January 25, 2001".

2. Delete the proposed pay notes 4 and 5 and substitute them with language similar to that used by the employer in our previous contract such as:

"Effective January 26, prior to any other pay revision which occurs on that date, an employee at level CAI-2 shall be paid in the "C" scale of rates at the rate of pay which is immediately higher than the employee's rate of pay as of January 25, 2002."

The attached dispute resolution process chosen by the parties provided the arbitrator with the power to act as a mediator. The parties also entered into a mediation-arbitration protocol with each other and the mediator-arbitrator which is also attached. A mediation-arbitration is conducted similar to any set of mediated negotiations. Aside from formal briefs filed at the outset, there is no formal record of the discussions between the parties which are all facilitated by the neutral through "shuttle diplomacy". Neither the mediator-arbitrator nor the parties take extensive notes and, as the protocol provides, only the mediator-arbitrator is entitled to rely on and use such exchanges.

In light of this inherent structure of mediation-arbitration, when awards are necessary they are brief and resemble a point form memorandum of agreement. They are often, as well, incomplete. The facilitated negotiations may not have focused on implementation details and this incompleteness will be carried into the award. Thus, the initial award of a mediator-arbitrator will follow a skeletal form while also retaining jurisdiction in the mediator-arbitrator to complete the dispute resolution exercise if the parties are unable to be guided by the principles of the award in resolving all that is required to incorporate the award into a collective agreement (as contemplated by paragraph 11 of the December 4, 2002 agreement between the parties).

Against this background, the issues raised by CFPA concerning the interpretation and implementation of paragraphs 1(a) and (b) of my award fall within the jurisdiction I reserved in paragraph 6. One can see from the filed briefs of the parties that the implementation details of restructure were not the focus of their differences - differences which occupied them through two years of conflict riddled negotiations. The adequacy of the wage structure was a central issue in these negotiations and I do not need to review its details in this supplementary award. Those differences are set out in the parties' formal written briefs.

Given the nature of a mediation-arbitration, it is appropriate only to identify my intent. CFPA is correct in its interpretation of my award and in its request for more precise implementing language. Where I removed a bottom step and added a top step, I intended all affected

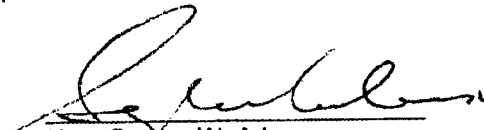
employees to be immediately moved to the next higher step from their pre-existing step before the general economic increase for that year was applied. I staged the restructures in issue (i.e. 1(a) for 2001 and 1(b) for 2002) to mitigate somewhat the impact of the award on the Employer. I did not intend the more complex restructuring protocol proposed by the Employer and to which CFPA has objected.

Order

Instead of the proposed Employer pay notes 2,3,4 and 5, the following implementation method shall apply:

- 1) Effective January 26, 2001, prior to any other pay revision which occurs on that date, an employee shall be paid in the "A" scale of rates at the rate of pay which is immediately higher than the employee's rate of pay as of January 25, 2001.
- 2) Effective January 26, 2002, prior to any other pay revision which occurs on that date, an employee at level CAI-2 shall be paid in the "C" Scale of rates at the rate of pay which is immediately higher than the employee's rate of pay as of January 25, 2002.
- 3) I retain jurisdiction to resolve all differences concerning the meaning and implementation of my initial award and this supplemental award in accordance with the terms of my original engagement.

Dated at Toronto this 27th day of June, 2003.


Hon. George W. Adams,

/Attachments