

Submission of the Canadian Federal Pilots Association (CFPA)
To the Honourable George W. Adams Q.C.
Regarding the application of his Award dated March 31, 2003.

The CFPA first became aware of the problem when we received, from a union member, a copy of new wage scales that had been published by the employer. The document (Attachment A), included "pay notes" prepared by the employer for inclusion in the collective agreement. Upon examination we discovered interpretations and material additions to the collective agreement which, if applied as written, would violate the terms of the arbitral award of March 31, 2003 in general and with respect to paragraphs 1(a) and 1(b) in particular.

The remaining issues in dispute can be found in pay notes 2 through 5 as follows:

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 range for twelve (12) months or more on January 26, 2002, will move to the new maximum rate of pay effective January 26, 2002.*

The employer's pay notes 2 and 3 are violations of paragraph 1(a) of the award and pay notes 4 and 5 are violations of paragraph 1(b) of the award.

The CAI-2 portion of the pay table is useful as an example to demonstrate the effect of the employer's application of both paragraphs 1(a) and 1(b) of the award.

CAI-2	Step		1	2	3	4	5	6		
Descrip	From:	\$	56650	58263	59923	61630	63390	65196		
Restruc. 26Jan01	To:	A		58263	59923	61630	63390	65196	67054	
3.2%		B		60127	61841	63602	65418	67282	69200	
Restruc. 26Jan01		C			61841	63602	65418	67282	69200	71172
2.8%		D			63573	65383	67250	69166	71138	73165
2.5%		F			65162	67018	68931	70895	72916	74994

The original rates of pay are depicted on Line \$, and Lines A through F depict the resulting rates after the action detailed in the Description column is applied (Line E is not included in the table because it does not apply to the CAI-2 category). The transitions resulting from restructuring, according to the employer's proposed methodology, are displayed by the circled rates moving to down to the next scale of rates below the circled rates.

The employer's methodology is reflected by the horizontal shifting of the pay table and a complex pay notes navigation formula that results in employees in Step 1 of the scale being amalgamated with those in Step 2 and employees in Step 6 are split up. Employees in Steps 2 to 5 stay at their current rates until their next annual increment is due thereby receiving no benefit on the effective date specified in the award. Over the long term, which extends beyond the life of this contract, employees will eventually be able to achieve the maximum rates in the wage scale; however, they will do so only after serving the additional years of service. This will have a significant detrimental effect on CFPA members and will fundamentally alter the relativity and seniority system within our pay structure.

Pay notes are a mixture of contract interpretations and substantive agreement provisions. In this instance, they represent unilateral determinations of pay matters by the employer, that are counter to the terms of arbitration award and any interpretation that would reasonably flow from the award.

During the arbitration hearings all wage proposals were designed to reach a target. These targets were thoroughly discussed and costed. The costing process produced two results: the benefit to the employees in all categories, and the cost of payroll to the employer.

All rates [steps] within the scales increase at a uniform rate of 2.85%. If you add a step and take off a step you are left with the same number of steps within the scale whether they be 5, 6, or 7 depending on the different classifications and levels [see the pay scales as submitted in the employer pay tables]. The employer's approach produces phantom pay scales. Instead of six steps in the case of the CAI- 2 and CAI-3 there are

now 7 steps with the first step being blank. According to the pay note direction the only employee to receive a 2.85% pay increase is one who is in the first year of the scale, because there is no rate of pay beneath his category in the pay table.

At all times the union has maintained that this type of restructuring should be costed at 2.85% of payroll. The only way that this valuation could hold true is if all employees were to receive an immediate benefit equal to moving to the next higher step in the pay scale applicable to their classification and level. This interpretation as demonstrated by the proposed pay notes significantly alters the quantum of what was expressed in the arbitration award. In fact, the employer's interpretation is tantamount to a pay freeze.

This is true for all subgroups, Civil Aviation Inspectors (CAI) 1 through 5 including engineering test pilots (ETP) and helicopter pilots (HPS). The CFPA submits that this calculation clearly is not borne out by any discussion throughout the negotiations and most particularly during the arbitration, including the plain text of the award.

The employer's approach is not justified by any rationale presented by the employer, and there is no conceivable rationale for providing increases to some within a classification and level while stagnating others. No case has been made that increases as a result of restructuring should only be provided to employees with less than one year of service within a particular classification and level or more than seven years of service. This results in amalgamation of incremental steps and regression in relativity for many employees relative to their peers. Many employees would perceive the net effect of the employer's application of the award as a retrograde move, and had such an alteration of the relativity within the group been discussed with the union at any time, it would have been firmly rejected.

The employer has claimed that this interpretation is a common practice in public service agreements. However, this point of view is not consistent with the experience of our group. In fact, if you look at pay note 2 in our last collective agreement (1999)(Attachment B), you find the following words:

"Effective October 26th, 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."

This pay note produced an immediate movement to a higher rate of pay which was consistent with the addition of 1 step at the top and the removal of one step at the bottom and was negotiated under those terms. The number of steps in the scale of rates remained unchanged but the pay rates to individuals were effectively increased by 2.85%. All employees were moved one step to the right.

The employer's proposed methodology is unprecedented in our experience and has never been done to our group. Researching contracts between the employer and our group back to 1980, there is no record of this application of restructuring being applied to our group. In fact, all pay tables and pay notes up until the 1999 contract were very clear and simple. They provided an effective date and a pay rate for that date. In multi-year settlements, all increments are aligned vertically without any horizontal shifting of pay scales that maintained current pay rates.

We request that the employer modify its approach to be consistent with all employees within the applicable classification(s) receiving immediate benefit from this form of restructuring. We believe that the award was perfectly consistent with the proposals, payroll costing and discussions during the hearings that resulted in the award. We believe that the application proposed by the employer is not consistent with discussions and information exchanged during arbitration hearings and cannot be squared with the plain text of the award.

The CFPA believes that the most efficient solution at this point, 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 25th, 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, 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 25th, 2002."

We believe this proposal to be most consistent with the content and detail of the discussions leading to the arbitration award. We also believe that this approach will more accurately reflect the terms of the award and will maintain the relativity and fairness within the group's pay structure. We request that the employer's published pay notes be modified as suggested above.