

**IN THE MATTER OF AN INTEREST ARBITRATION**

BETWEEN

**NAV CANADA**

("the Company")

AND

**CANADIAN FEDERAL PILOTS ASSOCIATION**

("the Union")

**RE: INTEREST ARBITRATION, 2006**

**BOARD OF ARBITRATION:**

**Chair: Michel G. Picher**

**Employer Nominee: Jacques Emond**

**Union Nominee: John Keenan**

**APPEARING FOR THE COMPANY:**

Elizabeth Cameron	Director, Labour Relations
Phil Valois	Manager, Labour Relations
Charles Montgomery	Director, AIS & Flight Inspections
Boyd Barnes	Manager, AIS Regional Office, Toronto

**APPEARING FOR THE UNION:**

Greg Holbrook	National Chairman
Ron Young	Consultant
Patrick Harbord	CPFA Representative for NAV Canada
Mark Bucken	Regional Union Representative

Mediation/Arbitration meetings were conducted in Ottawa on June 1, 2, 15 and 16, 2006.

## **AWARD**

This is an interest arbitration to establish a wage increase and to resolve other issues in dispute between NAV Canada and the Pilots working in its service, represented by the Canadian Federal Pilots Association (CFPA). At issue are the terms of the collective agreement to be in effect for three years following the expiry of the prior collective agreement in October of 2005.

NAV Canada is a non share capital private sector company established to administer all air navigation in Canada. It employs some 4,772 employees distributed through eight bargaining units. The CFPA represents approximately 38 employees in a structure which allows compliment of 40 employees.

The employees in the bargaining unit work in three groups. The Flight Operations group, with seven incumbent employees, is responsible for the flight inspection, calibration and certification of all ground based navigation aids in Canada servicing both civil and military facilities. The Aeronautic Information Services (AIS-SDP) group, numbering some twenty-two incumbents, is responsible for insuring that aeronautics information and data necessary for the safety, efficiency and regularity of air navigation within Canadian domestic air space and the Gander Oceana control area is properly available to both domestic and foreign agencies as well as individuals who are involved in either flying or related support activities. Finally, the ANS service design group, said to number 9 employees, is involved with assessing and recommending solutions concerning levels of the service, air space designs, regulatory proposals,

CNS/ATM technical requirements and changes as well as international aviation developments, among others.

The parties engaged in joint interest based negotiations under the auspices of Labour Canada from August 2 to 4, 2005. Bargaining resumed between September 26 and 30, 2005 assisted by a facilitator provided by the Federal Mediation and Conciliation Service. Further negotiations were conducted October 24 through 28, 2005. It is at or about that point that the Company introduced its plan to utilize a new computer software program (IPDAT) to enhance the efficiency of the airport approach design process, the principal work of the Aeronautical Information Services Division. Further bargaining ensued on January 26 to 31, 2006 as well as March 1 to 3, 2006 and May 23 and 24, 2006.

A partial tentative agreement was ratified March 31, 2006, it being agreed to progress unresolved issues to the mediation/arbitration process. Among those things determined within the partial agreement were professional currency training, vacation improvements, overtime averaging being reduced to one month from three months for STP employees and six months for employees in Flight Operations. Additionally, a new travel premium was agreed upon and a lump sum of \$1,500.00 was paid to all employees as an advance on their retroactivity emerging from the new collective agreement.

By far the most contentious issue is the impact of the Company's introduction of IPDAT software and the resulting efficiencies it will bring to the design of airport

approaches previously done manually by those who perform AIS SDP work. IPDAT is an independently produced software which the Company was obliged to purchase, by way of license. It has obtained eight licenses for the use of IPDAT on a twenty-four hour, seven day a week basis. Up to the present time AIS SDP employees have essentially worked regular day shifts. However, to maximize its IPDAT access, the Company now contemplates the need to establish both day and afternoon tours of duty, so that the software can best be matched to available employees, so as to maximize its use. This would mean that some AIS SDP employees would be required to work afternoon shifts, with at least one lead employee or supervisor, who is a member of the bargaining unit, to be assigned to such shift.

The Union vehemently resists the introduction of shift work for AIS SDP employees. It questions the need to move to shift work, arguing that the Company can achieve the desired levels of productivity utilizing the existing compliment of employees on staggered or overlapping day shifts. The Company strongly disputes that assertion. It points to the restricted number of software licenses, and the need for employees to work freely while in possession of a license for their entire tour of duty. In the Company's view, overlapping the employees on staggered day shifts will result in an undue burden of idle or unproductive time. In the Company's view the only feasible means of utilizing the eight software applications which are available to it is to have them fully available to the employees utilizing the license their the entire tour of duty, even though the employee in question may not be working online and before the computer screen for each and every minute for his or her shift.

There can be little doubt but that the introduction of IPDAT will have a substantial impact. The employer projects that it will go from the current level of some 200 manually prepared approach designs per year to a level of 1,000 approach designs per year, roughly a 500% increase in productivity. The Company also anticipates increases in the verification of approaches to the level of 1,000 per year. It also anticipates the current level of land use assessments to rise to 2,500 per year. It does not appear disputed that these changes, and the operation of the more efficient automated system over the three year period of the collective agreement, may well occasion some layoffs from the bargaining unit at the conclusion of the term of this agreement. It may be noted that the Company has given an undertaking that there will be no layoffs for the existing term.

The Arbitrator can appreciate the concern which motivates the position of the Union. Many bargaining unit employees transferred into the service of NAV Canada from their previous employment with Transport Canada. They may have done so with the expectation that their working conditions would generally remain the same, something which has in fact proved true to date. On the other hand, in an age of evolving technology few, if any, employees can truly expect their methods of work and related work schedules to remain forever unchanged. The introduction of new equipment and new technologies, essential for the ongoing improvement of efficiency and productivity, may well require changes both in work methods and work schedules.

This is such a case. Having carefully examined the various alternative work schedules presented by the Union, this Board is compelled to conclude that the employer is entitled to seek maximal use of the relatively costly software licenses which it has obtained and to do so by having resort to scheduling afternoon shifts. We do, however, consider that there is some latitude to phase in the obligation of shift work as it might impact the more senior employees in the bargaining unit, with the greater burden of mandatory afternoon shifts being placed upon the more junior and newly hired employees.

We therefore award as follows:

- 1) Employees on strength and performing AIS SDP work as of June 1, 2006 will have the choice of remaining on regular day shifts or opting for evening shifts until October 25, 2007.
- 2) All new employees to the bargaining unit, who are required to perform AIS SDP work, after June 1, 2006, will be required to work evening shifts, at the employer's discretion.
- 3) All occupied AIS supervisory positions in the bargaining unit, as of the date of this award, will be scheduled to work shifts as required. Current incumbents will be given an opportunity to revert to the SDP working level, with the associated reduction in salary, prior to the implementation of shift work. However, supervisors who do opt to revert to working level position will remain in their supervisory position and will be required to work shifts, until training of their

replacements has been completed. The employer shall make every reasonable effect to replace the supervisors as soon as possible.

- 4) All AIS employees in the bargaining unit will be required to work shifts as scheduled by the employer, to be bid by bargaining unit seniority, effective October 25, 2007.
- 5) Normal hours of work provisions for all AIS SDP positions will be amended to reflect scheduling on the basis of a 7.5 hour working day, Monday through Friday, 7:00 a.m. to 11: 00 p.m.

With respect to the issue of compensation, this Board considers that it is appropriate to award compensation which falls generally within the pattern of agreements arbitrated and negotiated among other bargaining units of the Company. Those other settlements fall essentially within the normative range of 2% to 3% increases per annum over the span of 3 or 4 year agreements, some with adjustments in increments in one of the years of the collective agreement. Bearing that pattern in mind, we therefore direct that the following wage increases be awarded to all employees in the bargaining unit:

Effective October 25, 2005 – an increase of 2.5%

Effective October 25, 2006 – an increase of 3%, 1% of which shall be non-pensionable

Effective October 25, 2007 – an increase of 3%, with an additional 2.5% increment to be applied to the grid by adding one additional step at the top.

In addition, the \$1,500.00 advance paid to the employees shall be treated as an additional productivity bonus, and shall not be applied in reduction of their entitlement to the retroactive payment of wages arising from this award.

The Board retains jurisdiction in the event of any dispute between the parties having regard to the interpretation or implementation of this award.

Dated at Ottawa this 27<sup>th</sup> day of July, 2006

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MICHEL G. PICHER  
ARBITRATOR

“Jacques Emond”

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Jacques Emond  
Employer Nominee

### **DISSENT OF THE UNION NOMINEE**

1. The Union Nominee dissents from the majority Award on the issue of compensation;



2. Two of the main issues, if not the two main issues, before the Board were recognition of, and compensation for, increased productivity and the imposition, if such be the case, of shift work;
3. Regarding productivity, the clear understanding was that the Employer acknowledged that monetary recognition was due for the extraordinary productivity increase which will accompany the implementation of IPDAT. The Employer's assessment was a five hundred percent (500%) increase in productivity, which the Union did not contest;
4. The second issue is that of shift work. This bargaining unit has never done shift work and the Union presented a convincing case that many members of the bargaining unit had transferred in or joined to avoid shift work;
5. The Union's position, supported by detailed projections, was that shift work was unnecessary to achieve the Employer's desired productivity improvements;
6. The Employer's resistance to shift work was more impressionistic, but, on the basis of the Employer's general right to manage its operations, all members of the Board were willing to accept the introduction of shift work. The Union, correctly in my view, expected to be compensated for this major change in working conditions;
7. The introduction of shift work within the bargaining unit and the anticipated five hundred percent increase in productivity are both major career and lifestyle changes for

the members of the bargaining unit. In addition they bring the real and acknowledged possibility, if not probability, of layoffs at the end of the term of this collective agreement;

8. Both of these “sea changes” clearly take the issue of compensation out of any relationship with the pattern of agreements with other bargaining units of the Employer;
9. In my view, the compensation awarded by the majority gives far too little recognition to the productivity increase and the move to shift work. Treating the fifteen hundred dollars (\$1,500.00) advance as a productivity bonus is a one time payment which has no further effect on compensation. The restructuring of pay grids with the addition of an increment has also been applied in other negotiated or arbitrated agreements within the industry. This is part of the “pattern” rather than a recognition of the exceptional circumstances which avail for this bargaining unit;
10. Of specific concern to the Union Nominee, however, is that the additional increment to be applied to the grid at the beginning of the third year of the agreement will not increase all pay rates within the grid by 2.5% but rather only adds an extra seventh year, 2.5% higher than the sixth year;
11. This deprives anyone with less than six years seniority of that increase. These more junior persons are specifically the ones who will be forced into evening shifts, for which they will not get this additional compensation;

12. For the foregoing reasons I dissent from the majority Award on compensation. Given the nature of the mediation-arbitration process I do not consider it necessary nor, in the present circumstances, useful for me to state what I would have awarded as appropriate compensation.

Dated at Montreal, this 27<sup>th</sup> day of July, 2006.

“John T. Keenan”

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John T. Keenan  
Union Nominee