

ref.#

Scheduling  
Seniority

**FINDINGS AND DECISION**  
IN A DISPUTE  
between

**LABRADOR AIRWAYS (Air Labrador) LTD**  
("the Employer")  
and

**INTERNATIONAL ASSOCIATION OF MACHINISTS  
and AEROSPACE WORKERS**  
("the Union")

Union Grievance

At the Parties' request, the evidence & argument will remain confidential.

**APPEARANCES:**

**For the Union**

Presenter: Mr. Roy Locke, Union Representative

**For the Employer**

Presenter: Ms. Joy Sparkes

Advisor: Mr. Wayne Morris, Chief Pilot

Witness: Mr. Wayne Morris

**Arbitrator** Dr. John A. Scott

The Grievance was heard at St. John's on May 28, 2008.

**The Statement of Grievance:** (December 10 / 07) "Junior Employees working different and better schedules then (*sic*) senior employees doing same job."

**Articles Violated:** Articles 1:06, 12.

**Remedy requested:** "All employees be placed on same schedule"

**Company Reply:** (Dec 15 / 07) "No violation of Collective Agreement."

**ITEMS TAKEN INTO EVIDENCE:**

Consent	#1	Grievance (December 10, 2007)
"	#2	Collective Agreement (Jan. 1, 2007 to Dec. 31, 2009)
"	#3	Labour Management Ctte Minutes October 24, 2007
"	#4	Labour Management Ctte Minutes February 6, 2008
"	#5	Summary Report Douglas Monger
"	#6	Summary Report Eric Tremblay
"	#7	Summary Report Stephan Landry

**THE PARTIES AGREED THAT:**

- the Arbitrator was properly appointed with authority to hear the case;
- the Arbitrator's notes of the evidence and argument as recorded in the final award will prevail in the event of conflict;
- all parties likely to be affected by the outcome of the hearing have received notice and been informed of their right to appear and/or be represented;
- all matters pertaining to the grievance procedure and all time limits, whether statutory or arising from the collective agreement, were either properly observed or are waived;
- there are no other points to be raised as to arbitrability or other preliminary objections;
- issues of quantum will be considered separately, and if the parties are unable to reach agreement within sixty (60) calendar days after publication of the award they are to be referred to the Arbitrator for determination;
- the Arbitrator will remain seised of the matter for period of sixty(60) calendar days after its publication should issues of interpretation of the Award arise.
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**ARTICLES FROM THE COLLECTIVE AGREEMENT CONSIDERED**

**ARTICLE 1 – JURISDICTION**

- 1.02 The Union recognises that it is the exclusive responsibility and right of the Company to conduct, direct and manage the Company according to the stipulations of the present agreement, and notwithstanding the generality of the preceding, these rights will include the introduction of technical improvements, new ways of operations, the right to promote, demote, transfer, suspend, dismiss, discipline or discharge the employees for cause.
- 1.06 The Company shall enter into no contract, either expressed or implied, with any employee or group of employees covered by this Agreement, except through the medium of this Agreement.

## **ARTICLE 2 – DEFINITIONS**

2.01 (m) **Home Base** means a station, which is the common domicile of a pilot or a group of pilots affected permanently at the station where airline operations are accomplished.

## **ARTICLE 6 - TRANSPORTATION AND EXPENSES**

6.01 The Company shall pay expenses for separate hotel rooms, meals, and transportation to and from the airport, to pilots away from there assigned base for purposes of regular flight duty, temporary job or assignment, in the case of an emergency, familiarization, training, or when travelling as a passenger at the request of the Company....

## **ARTICLE 10 – HOURS OF FLIGHT AND FLIGHT CREDITS**

10.05 The company recognises the Union's position of requiring pilots to have a better knowledge of their work schedule and agrees to set up a joint committee between the Company and the Pilot group to improve the work schedule.

## **ARTICLE 12 – SENIORITY**

12.03 Seniority shall govern all pilots in case of promotion or demotion, their retention in case of lay-off, their assignment due to expansion, reduction or change in scheduled operations, their recall following lay-off, their choice of vacancies provided that the pilots (*sic*) qualifications are satisfactory for the good conduct of the operations. Should the Company consider that the pilot lacks certain qualifications he/she shall be furnished with a written statement to that effect, upon request.

## **ARTICLE 19 – ARBITRATION**

19.03 The Arbitrator will make his/her award as to the matter in dispute known to the Parties within thirty (30) calendar days of the last hearing and in making his/her award, shall not have the power to amend, delete from, or add to, any provision of this Agreement.

19.04 The award so made shall be final and binding upon the Company, the Union, and the pilot.

## OPENING STATEMENTS

**FOR THE UNION** Mr. Locke described the various subgroups within the Pilots' Group comprising:

- 1) those flying Dash 8's between St. John's, Labrador, & Montreal;
- 2) those flying Twin Otters throughout the Coast of Labrador;
- 3) those flying Beech 1900 between Blanc Sablon and Montreal.

The third group has its base established at Blanc Sablon.

Last year the Company changed the arrangements, and as a result some junior pilots now work more desirable (10, 12, or 14 days on / 10 days off) schedules than the senior pilot, Mr. Doug Monger, who is based and resides in Blanc Sablon and works a 5 days on 2 days off schedule.

The grievance claims that the senior pilot should work the same 10, 12, or 14 days on / 10 days off schedule that the junior pilots work.

**FOR THE COMPANY** Ms. Sparkes denied that the Company has violated the Collective Agreement. She pointed out that Air Labrador and IAMAW have one collective agreement covering the entire pilot group, and cited Article 1.02 which specifically states:

The Union recognises that it is the exclusive responsibility and right of the Company to conduct, direct and manage the Company according to the stipulations of the present agreement, and notwithstanding the generality of the preceding, these rights will include the introduction of technical improvements, ***new ways of operations...*** (emphasis added)

The Company has the right to schedule work.

Over the years the Company's relationship with the pilot group was deteriorating for various reasons, and during the last round of negotiations we agreed to establish a formal Labour/Management Committee. The Company made some drastic changes to demonstrate our commitment to

establish a stronger relationship with the pilot group. The Company has set up the appropriate committee as outlined in the Collective Agreement (Article 10.05) to ensure our commitments are met.

Air Labrador has operated a scheduled service on the Quebec North Shore since 2000, and have based an aircraft in Blanc Sablon to provide that service. The Company has a policy that states that all crews must reside at their home base, regardless of the aircraft type. The reason for this policy is to avoid crewing problems caused by the need for crews to deadhead from another location, and also to reduce accommodation costs. As a result, many of our pilots have left their homes and moved to various locations including Goose Bay and Montreal.

## **EVIDENCE**

**THE ONLY WITNESS** was Mr. Wayne Morris, the Company's Chief Pilot. He testified, under direct and cross examination, that in the past 24 to 36 months there has been an unheard of demand for pilots. Consequently, it is very difficult to find pilots willing to live in what might be considered a remote location. "We weren't able to find crews willing to live there."

The issue of the crewing in Blanc Sablon was brought to the Labour / Management Committee in an effort to solve this problem together. Mr Morris referred to the minutes of LMC meeting dated October 24, 2007, (Consent # 3), which reads, in part:

### **3. Scheduling and crewing in Blanc Sablon**

Because of the staffing problems in YBX, it was felt that a new commuting policy would help alleviate some of the problems at that particular base.

ACTION: Wayne Morris to issue a new policy regarding commuting for the **YBX crews only**.

Mr Morris went on to testify that it was decided jointly to implement a new "commuting policy" for Blanc Sablon to provide Air Labrador the flexibility required to attract crews for Blanc Sablon.

This issue continued to be discussed at the following two Labour / Management meetings with adjustments to the new policy as required. Then on February 6, 2008 as outlined in Minutes of the meeting (Consent # 4), there was agreement that the scheduling and crewing in Blanc Sablon was working for the crews and Company under the new commuting policy.

Mr. Morris pointed out that the new commuting policy is designed to reduce accommodation and travel costs entailed in allocating revenue-generating passenger seats to crews dead heading to and from their bases. It requires pilots to work 10, 12, or 14 days continuously from the Blanc Sablon base in order to achieve these cost savings. The new policy enables the Company to secure crews to maintain the service.

He testified that this grievance was raised by Mr. Doug Monger who is senior to any of the new pilots hired under the new commuting policy. But Mr. Monger, who lives in Blanc Sablon, does not commute, and the new commuting policy therefore simply does not apply to him.

Mr. Morris also reviewed Mr. Monger's summary work report for the period February 23 to May 8, 2008 compared for the same period with 1) Mr. Tremblay's and 2) Mr. Landry's: two new hires who work under the new commuting policy. He noted that the days worked for all three were 35 (Monger), 35 (Tremblay), and 36 (Landry), while the total flight duty times were 296.2 (Monger), 290.2 (Tremblay), and 321.3 hours (Landry). In Mr. Morris' view, there is no discrepancy on which to ground a grievance.

## **ARGUMENT**

**For the Union** Mr. Locke described the question before the Arbitrator.

Does the Agreement allow the Company to require a senior person to work a less desirable schedule than those junior to him enjoy? He argued that the Senior person should be given the same schedule as the junior people.

**For the Employer** Ms. Sparkes argued that the Company is threatened if it is forced to change the mutually agreed commuting policy governing Blanc Sablon only. If the policy were to be further modified to allow Mr. Monger, who is not a commuter, to work the schedule agreed for those who do commute to Blanc Sablon, then the entire pilot group would be entitled to make the same claim. The result would be that the general Company policy requiring all crews to reside at their home base would collapse, and costs would rise to the point where services would have to be eliminated.

## **CONSIDERATIONS**

**At Issue between the Parties**, is the Union's claim that the Company is violating the seniority provisions of the Agreement. The Company claims that the senior employee is neither adversely affected by the policy, nor subject to it since he does not commute.

The Union bases its case on two fundamental principles: 1) the integrity and uniqueness of the Collective Agreement itself as articulated in Article 1.06; and 2) on the seniority provisions as set out in Article 12.03.

### ***Uniqueness of the Collective Agreement:***

I shall deal first with the suggestion that the Company has violated the Collective Agreement by striking an agreement with those pilots working the new commuting policy that is separate because it was not negotiated "through the medium of this Agreement". Article 1.06 reads:

The Company shall enter into no contract, either expressed or implied, with any employee or group of employees covered by this Agreement, except through the medium of this Agreement.

I note, however, Article 10:05 provides that:

The company recognises the Union's position of requiring pilots to have a better knowledge of their work schedule and agrees to set up a joint committee between the Company and the Pilot group to improve the work schedule.

The evidence is that "a joint committee", the Labour Management Committee, at its 4<sup>th</sup> meeting on October 24, 2007, approved development of a new commuting policy to govern the specific situation at Blanc Sablon (Consent #3 "**YBX crews only**"). Then, at its 7<sup>th</sup> meeting on February 6, 2008 the committee reviewed its implementation with approval (Consent #4). Thus, in Article 10.05 the Collective Agreement does provide the Parties the mechanism specifically to "improve the work schedule."

I also note that Article 6 sets out "transportation and expenses" as required by the Collective Agreement for pilots which confirms for me that at least some of the issues involved in the commuting policy as it was described to me are addressed directly within the Collective Agreement, and not separately from it. Thus, the new policy was developed "through the medium of this Agreement."

The Union also complains that Mr. Monger's seniority-based right to preference over junior employees in "scheduled operations" has been infringed by the Employer's introduction of the new commuting policy. I note that Article 12.03 provides that:

Seniority shall govern all pilots in case of promotion or demotion, their retention in case of lay-off, their assignment due to expansion, reduction or change in scheduled operations, their recall following lay-off, their choice of vacancies provided that

the pilots (sic) qualifications are satisfactory for the good conduct of the operations. Should the Company consider that the pilot lacks certain qualifications he/she shall be furnished with a written statement to that effect, upon request.

Article 12.03 refers to "scheduled operations" as governed by seniority. But this is not the same "work schedule" language that is found in Article 10.05. Thus, I do not find that seniority expressly governs the particular "work schedule" issue here complained of.

Thus, with respect, I am not persuaded that the Union's position in this matter is sustained by the language of the Collective Agreement. For the instant grievance to succeed, much stronger language would be required to sustain the Union's claims either that, in developing a new commuting policy the Employer had made an agreement outside the Collective Agreement, or that it had eroded Mr. Monger's seniority rights as set out in Article 12.

In introducing the new commuting policy the Company was operating within provisions of the Agreement to introduce a new method of operation in light of the business considerations. Mr. Monger is not a commuter, and his work schedule is not, therefore, governed by its provisions.

### **DECISION**

In light of the foregoing considerations, therefore, I find that:

### **THE GRIEVANCE IS DENIED.**

Respectfully submitted as the decision of the Arbitrator.

John A Scott, Arbitrator

June 6, 2008