

**IN THE MATTER OF AN INTEREST ARBITRATION**

**B E T W E E N:**

**AIR CANADA**

**- and -**

**AVEOS FLEET PERFORMANCE INC.**

**- and -**

**INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS**

**MARTIN TEPLITSKY**  
**Arbitrator**

**APPEARANCES:**

**On behalf of**  
**Air Canada:**

**Scott Morey**  
**Fred Headon**

**On behalf of**  
**Aveos:**

**Ron McRobie**  
**Antonietta Marro**  
**Frank Szemenyei**

**On behalf of**  
**IAMAW**

**Jim Hayes**  
**Amanda Pask**  
**Chuck Atkinson**  
**Tony Didoshak**  
**Jim Coller**

This is an interest arbitration pursuant to a Memorandum of Agreement dated January 8, 2009. It results from the sale to Aveos of the Maintenance Repair and Overhaul (MRO) business operated by Air Canada Technical Services. There are many issues which arise in the sale of a business. The MOA addresses these. However, five issues were not resolved. These were referred to me for mediation/arbitration. All parties presented briefs at mediation and the IAM and Air Canada provided additional briefs for the arbitration. Aveos rested on its mediation brief. I also received some representations from IAM members. I thank the parties for their helpful submissions. I am aware that the problems which arise in this matter are very important to the parties and that many employees have grave concerns about how the sale impacts their future. I am satisfied that the parties conducted themselves in good faith throughout this process mindful of both their constituencies' needs and the legal rules found both in the *Canada Labour Code* and other applicable labour laws which control many outcomes. For my part I have attempted to balance the legitimate interests of each party. I propose to consider each of the 5 questions in order.

**Q 1 - Whether an Eligible Employee who retires or resigns from Air Canada pursuant to Transition Options 3, 4, 6 or 7 and accepts an available position from Aveos will commence employment with or without any recognized service at Aveos for vacation entitlement.**

The Union submits that employees who retire from Air Canada and then are hired at Aveos should carry their service date to Aveos for purposes of vacation entitlement. Aveos submits that there is no principled basis to make such an exception for an employee who is vis à vis Aveos a new hire.

**AWARD**

The decision to retire, take a pension and then be rehired by Aveos is the employee's. Full service and seniority can be maintained by not retiring. I doubt that retirees who accept new

employment have a reasonable expectation that their prior service will follow them to their new employment. Accordingly, I dismiss this request. However, vacation is a very important value as people age. Because these employees are in receipt of a pension in addition to their income, they should be able to afford the additional time off without pay. There is no direct cost to the employer although there is a loss of productivity during the 3 weeks unpaid. Accordingly, I award that eligible employees who retire or resign, will receive, at the employee's option up to 3 weeks unpaid leave. These 3 weeks are to be bid immediately after the regular vacation bidding.

**Q II - Whether an Air Canada Eligible Employee on permanent lay-off on the CIRB Date whose name appears on the Seniority List and who holds recall rights in categories and classifications used at Aveos at points at which both Aveos and Air Canada have operations involving those categories and classifications will be required to choose by the Selection Closure Date or other date agreed to by the parties between remaining on the Air Canada recall list or being placed on the Aveos recall list, or whether such employee will be allowed to wait and make his or her choice at the time of the first recall opportunity presented by either Air Canada or Aveos, together with the employee's rights upon recall.**

The Union's submission is that it is unfair to require employees to elect which company they prefer to be recalled to until the first permanent recall occurs. Aveos' position is essentially two-fold. First, as a distinct employer it is entitled to know at the outset who is within its workforce. Second, it is impractical to operate two recall lists and pension issues will no doubt arise. Air Canada submits that the employee's election should be deferred to the first recall opportunity.

### **AWARD**

I have concluded that there is no unsurmountable problem in deferring the election until the first recall opportunity. A number of rights and conditions must be imposed.

- *First, recall must include any temporary recall; in other words, employees must choose between remaining an employee of Air Canada or becoming an employee of Aveos at first recall, be it a temporary recall or a permanent recall. This is necessary because were it otherwise, confusion would reign on issues of pension, vacation, service, etc.*
- *Pending first recall, Eligible Employees are to be considered employees of Air*

*Canada only for all purposes except the right to recall as further outlined hereafter.*

- *Pending first recall, Eligible Employees are to be considered members of the applicable Air Canada bargaining unit only.*
- *Eligible Employees accepting the first recall, be it temporary or permanent from one employer, shall be permanently removed from the other employer's recall list and forfeit all future recall rights with the other employer.*
- *Eligible Employees refusing the first recall, be it temporary or permanent from one employer, will forfeit all future recall rights with this employer and their name removed from this employer's recall list.*
- *Conditions of employment for Eligible Employees accepting first recall, either temporary or permanent at Aveos shall, except for pension purposes, be those outlined in Section VII.A., excluding however paragraphs VII.A.5 of the MOA.*
- *Eligible Employees accepting first recall at Aveos will be granted pension portability rights only and shall not otherwise be governed by the Pension and Benefits Agreement.*
- *Even if no recalls occur, Eligible Employees must make their choice of employer at the latest within two (2) years of the Selection Closure Date.*

**Q III - Whether, following the severance of bargaining units, Eligible Employees who become employees of Aveos in accordance with Transition Option 5, or Air Canada Employees who become employees of Aveos pursuant to Section V.B.3., should retain their position and rights on Air Canada's recall list for a period not extending beyond thirty-six (36) months following the CIRB Date, and if so, under what terms and conditions.**

The Union submits that these employees who wanted to remain at Air Canada but have accepted Aveos employment to remain in active employment should remain on the Air Canada recall list for up to 36 months.

Aveos' submission is that such a right undermines the MOA which has as its intent and objective to allow Aveos to obtain its own dedicated and permanent workforce.

Air Canada made no submissions on this point.

**AWARD**

In my opinion, it would be completely unfair to Aveos to allow these employees up to 36 months to return to Air Canada. Such an entitlement could destabilize Aveos' workforce and render its training costs of no value. These concerns are real not theoretical. Overall, at the present time, at least, Air Canada is perceived as the employer of choice. It is the employer that is known and employees feel more comfortable under its wing. Over time, these perceptions may change as employees become more familiar with Aveos and feel more secure. The skill sets employed at Aveos are also valuable in the Air Canada world. Accordingly, if these employees were granted the right sought, they would likely leave at the first opportunity.

In the result, I do not allow the "right" sought.

**Q IV - Whether the travel privileges proposed by Air Canada in Schedule 1 will apply to Air Canada Employees transitioning to Aveos under this Memorandum of Agreement, or whether the travel privileges should be the same as those that apply at Air Canada. The parties agree that the issue of whether the arbitrator has jurisdiction to determine the scope of travel privileges provided by Air Canada or whether the travel privileges proposed by Air Canada in Schedule 1 will apply is properly before the arbitrator.**

Without prejudice to its position in other interest arbitrations, in this matter the employer, without prejudice or precedent, did not insist that I lacked jurisdiction.

**AWARD**

The employer had relied on a decision of Arbitrator Keller in *Air Canada v. IAM* (the "Horan case") 2000 (LAD No. 676). The arbitrator held that an employer decision to suspend travel privileges for 2 years was not arbitrable because no breach of the Collective Agreement was alleged. I agree completely with Arbitrator Keller's award. However, it is a decision on a "rights" arbitration. It neither purports to nor could it affect the jurisdiction of an interest

arbitrator.

In my opinion, an interest arbitrator has jurisdiction to make any contract the parties are competent to make.

In the result, the objection to jurisdiction is dismissed.

I turn to the merits.

The employer's offer is contained in Schedule "1" to the MOA.

The Union submits that Air Canada employees who join Aveos should be treated for purposes of travel passes, as though they were Air Canada employees. Alternately, the Union notes that Air Canada has, in the past, offered travel passes based on the number of years of service of the departing employee. The Union submits that employees should be granted an option to select 3 C2 passes per employee and eligible family members for the number of years of continuous service.

Aveos did not make submissions.

Air Canada's position is that its offer is fair and reasonable and that once an employee has left its employ, it owes the employee no further obligation. Alternatively, it is submitted that Aveos employees should not enjoy the same priority as Air Canada employees, if the option sought by the Union is awarded. In any event, Air Canada's position is that as provided in the MOA, any travel privileges are a retiring allowance within the meaning of the *Income Tax Act (Canada)*.

I have concluded that Air Canada's offer should be part of my award. However, an additional option should be extended to those employees who are not in Category 1 or Category 2

in Schedule 1. I accept the Union's alternate submission to a point, that employees should have the option of choosing 3 passes per annum of Air Canada service to be used by the employee and eligible family members. However, I award a priority of C3/Y10. I have reached this conclusion for several reasons. First, there has been a past practise of providing passes on severance based on years of service. As for the C3/Y10 priority, I accept as legitimate a distinction in priority between Air Canada employees and employees of Aveos, an unrelated employer.

However, because the MOA contemplates the secondment of employees between Air Canada and Aveos for a period of time after this matter is dealt with by the CIRB, I also award that employees will accrue service until December 31, 2010, for purposes of determining eligibility for passes under either option. This will not only move many employees into the over 15 year category, it will also offer additional benefits for all employees.

**Q V - Whether any air Canada Employee who accepts available employment with Aveos, or who elects laid off status with recall rights to Air Canada, pursuant to the terms of this Memorandum of Agreement, is as a result entitled, under either the applicable Collective Agreement or the *Canada Labour Code*, to receive severance pay.**

The Union submits that all employees who are not in Air Canada's employ at the end of transition are entitled to severance. In the alternative, the Union submits that in accordance with the *Canada Labour Code*, any Air Canada who is on laid off status for a term greater than 12 months, has an entitlement to severance pay. Air Canada in essence accepts the latter proposition. However, Air Canada submits that employees who accept positions at Aveos are not entitled to severance.

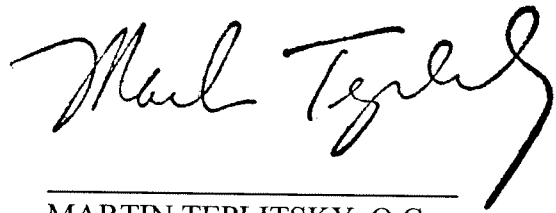
### **AWARD**

It seems clear to me based on a plain reading of the legislation and as was found in *Bebeau v. Bank of Montreal* [2001] C.L.A.D. No. 447 and other authorities, that there is no lay-off when a sale of a business occurs if the employee accepts employment by the purchaser.

Accordingly, employees who accept employment with Aveos are not entitled to severance pay.

I remain seized.

DATED the 5<sup>th</sup> day of March, 2009.

A handwritten signature in black ink, appearing to read "Martin Teplitsky". The signature is written in a cursive style with a large, sweeping flourish at the end.

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MARTIN TEPLITSKY, Q.C.  
Arbitrator