Air Canada and Air Canada Rouge's Submissions to the Labour Program, Employment and Social Development Canada:

Probe on Unpaid Work in the Airline Sector

October 17, 2025

AIR CANADA

A STAR ALLIANCE MEMBER

INTRODUCTION

On August 18, 2025, the Minister of Jobs and Families announced that the government is launching consultations with stakeholders to determine whether flight attendants are being compensated in accordance with Part III of the *Canada Labour Code* ("*Code*").

Representatives of Air Canada and Air Canada Rouge actively participated in all four (French and English) of the virtual consultations on this matter hosted by the Labour Program in September and October 2025.

Air Canada and Air Canada Rouge value the work and commitment of our over 10,000 flight attendants and are proud of the collective agreement we recently negotiated which was achieved without concessions from the union and included improvements to wages, pensions and benefits, and a mutually agreed to modernization of compensation with the addition of a "Ground and Cabin Security Premium" for work performed on the ground.

In light of the complexity of the subject, Air Canada[1] welcomes the opportunity to present this written submission in which you will find detailed information on flight attendant compensation at Air Canada.

[1] We sometimes refer to Air Canada and Air Canada Rouge as Air Canada, and to flight attendants and service directors as flight attendants, in each case as the context requires.

EXECUTIVE SUMMARY

In short, we submit the following:

- The compensation model of flight attendants used at Air Canada complies with the *Canada Labour Code*. It is the result of many rounds of collective bargaining over several decades and has been agreed to and recommended to its members by a sophisticated, experienced union.

- This compensation model reflects an industry practice, that has been negotiated and agreed upon by many airlines and unions, as an accepted and established framework to compensate flight attendants fairly and equitably for all tasks associated with their work.

- The key element of the compensation model is that it is primarily based on the number of credits hours accumulated by flight attendants in a given month (subject to certain guarantees). These credit hours are derived from formulas contained in the collective agreement and do not represent working time as such.

- It has been acknowledged and understood that this compensation model was designed to account for the fact that this pay system does not allow all hours of work, for which there has been remuneration, to be captured by traditional tracking methods. This is why the hourly rates provided in the collective agreement are comparatively high and well exceed the applicable minimum wage (in the case of Air Canada, the hourly rates range from 26.42$ to 87.01$ in the collective agreement that ended on March 31, 2025. (The rates that will be applicable in the new collective agreement are currently being determined in interest arbitration).

- An arbitration award rendered in 2020 has acknowledged that Air Canada's compensation system, as it relates to flying duties, did not violate the minimum wage provisions of the *Code.* The award however ordered that for non-flying related duties, flight attendants are to receive the greater of the minimum wage and their collective agreement or policy entitlement (which is 50% of the applicable hourly rate associated to flying duties). Air Canada has been compliant with this award since it has been issued.

- It is unfair to compare the average monthly earnings of a flight attendant to an individual who works a traditional 160 hours per month schedule because even if one were to accept CUPE's claim that flight attendants work on average 35 hours per month beyond their credit hours, the total of those hours is significantly less than 160 hours.

- During our most recent negotiations, in direct response to CUPE's never before tabled demands with respect to "Unpaid Work", and in an effort to reach a ratifiable agreement, Air Canada and Air Canada Rouge agreed to add an <u>additional</u> component to the pay structure, namely a new "Ground and Cabin Security Premium".

DISCUSSION QUESTIONS FROM LABOUR PROGRAM'S SEPTEMBER 12, 2025 DISCUSSION PAPER "PROBE ON UNPAID WORK IN THE AIRLINE SECTOR"

You will find below our answers to the ten discussion questions that were circulated by the Labour Program on September 12, 2025 in its consultation document. Air Canada is, of course, available and would be pleased to assist should any additional information on any matter relating to flight attendant compensation be needed.

1. **How many flight attendants are employed in your workplace/by your employer? How many are pursers/service directors?**

Please find below the number of flight attendants and service directors employed by Air Canada and Air Canada Rouge, as well as the combined total of both airlines, on October 7, 2025. Please note that Air Canada Rouge does not have a service director classification.

	Flight Attendants	Service Directors	Total
Air Canada Mainline	7698	1,872	9,570
Air Canada Rouge	880	n/a	880
Combined Total of Air Canada & Air Canada Rouge			10,450

2. **Are flight attendants (including pursers/service directors) unionized? Are there exceptions for certain employee categories?**

Yes, Air Canada's flight attendants have been unionized for over 70 years.

The current certification order applicable to Air Canada flight attendants, Order 8096-U, which was issued on August 3, 2001 further to the merger of Air Canada and the former Canadian Airlines, does not contain any exceptions for any employee categories and applies to "*all cabin personnel employed by Air Canada*"[2].

Air Canada Rouge's flight attendants are also unionized and have been since the first flight attendant completed training in 2013. Indeed, Canadian Union of Public Employees (CUPE) was voluntarily recognized by Air Canada Rouge as the sole bargaining agent for Air Canada Rouge Cabin Personnel in a Memorandum of Agreement dated November 2, 2012 before the company had even been named[3].

[2] Cabin Personnel is defined in the collective agreement applicable between Air Canada and the Canadian Union of Public Employees, Air Canada Component ("CUPE") as including both Service Directors and Flight Attendants.
[3] We note that this Memorandum of Agreement was signed before Air Canada Rouge was launched or even named (in the Memorandum of Agreement the company was simply referred to as "Low Cost Carrier (Yet to be named)".

3. **Please describe the pay structure for flight attendants, including rates of pay (e.g., duty period guarantee credits and trip hour guarantee credits) and allowances (or other non-wage benefits).**

Flight Attendant Compensation Model at Air Canada

Due to the nature of their work, flight attendants do not work a traditional schedule of 8 hours per day, 40 hours per week and/or 160 hours[4] per month. Rather, flight attendants' schedules vary from day to day, week to week, and month to month. Accordingly, the hours that flight attendants work are determined by a seniority-based bidding system and are converted into credit hours using the formulas contained in the collective agreement. These formulas are comprehensive and are meant to capture all work performed by flight attendants including while on the ground, while the aircraft is in motion, and while away from base.

These credit hours are then multiplied by the applicable rate of pay. The rate of pay is determined by a crew member's classification (flight attendant or service director, if applicable) and their years of service[5].

It is crucial to understand that credit hours are not simply a computation of the time an aircraft is in motion as claimed by CUPE. To the contrary, this compensation model includes amongst other things:

- the time spent on the ground before, after, and in between flights (as applicable);
- the time a flight attendant spends away from their home base; and
- minimum monthly guarantees.

Again, this is the reason why the hourly rates associated with credit hours are relatively high, (up to $87.01/hour in Air Canada's previous collective agreement), and why the parties have specifically negotiated language that compensates non-flying-related work at a lower rate (normally one-half of the applicable hourly rate). There are numerous examples of non-flying work that occurs outside the normal scope of work performed by flight attendants that is compensated at a reduced rate. For example:

- Annual Recurrent Training: paid at one-half (1/2) the hourly rate (art 5.10)
- Grooming Lectures: paid at one-half (1/2) the hourly rate (art 5.10)
- Language retests: paid at one-half (1/2) the hourly rate (art 5.10)
- Investigation of Passenger Complaints: paid at one-half (1/2) the hourly rate (art 5.10)
- Formal Annual Performance Meeting: paid at one-half (1/2) the hourly rate (art 5.10)
- Training credits on scheduled days off: paid at one-half (1/2) the hourly rate (art 6.04.01)
- Online training: paid at one-half (1/2) the hourly rate (art 6.04.01.01 & L55.06.06)

[4] For illustrative purposes, we are using 4 weeks in a month, though we note there are, on average, 4.3 weeks in a month. Accordingly, the average number of hours worked in a month is actually 173.3 hours.

[5] In the case of narrowbody Service Directors at Air Canada, their hourly rate of pay also varies depending on the number of years they have been in that classification.

- Training Credits at Air Canada Rouge: paid at one-half (1/2) the hourly rate (L55.06.04)

You will find additional details on the calculation of credit hours and negotiated guarantees in **Appendix A** to this document.

Additional Pay for flight related ground duties outside the normal duty period

In addition to credit hours, which as explained above compensate for more than simply a flight attendant's flight hours, flight attendants may also, in certain circumstances, be entitled to additional pay for flight related ground duties that fall outside the normal duty period captured by the formula. Specifically, Air Canada flight attendants may be entitled to:

i) **For Ground Duties performed prior to or following the termination of a duty period ("Pre/post period")** - A flight attendant required to report for duty prior to or to remain on duty following the termination of a Duty Period is paid at 50% of the hourly rate of pay.

ii) **For Ground Duty Service to passengers** – A flight attendant required to provide meal, bar or beverage service to passengers on the ground is paid 50% of the hourly rate of pay if the total of ground duty credits plus flight time credits exceeds the duty period guarantee and the trip hour guarantee.

4. Are there activities where flight attendants are at the disposal of the employer but are not remunerated? a. If so, what are the activities? b. Are employees compensated for such activities in other ways?

No, all activities are remunerated pursuant to the compensation model outlined above and in **Appendix A**.

5. Are flight attendants paid at least the minimum wage for every hour they work, as per the meaning of work under IPG-002? If not, please elaborate.

We re-confirm not only that there is no "unpaid work" at Air Canada (the original allegation we understood to have led to this probe), but also that flight attendants at Air Canada and Air Canada Rouge are paid at least[6] the minimum wage for the number of hours they work[7].

First, all hourly rates of pay at both Air Canada and Air Canada Rouge, which even under the previous collective agreement varied between $26.42 per hour and $87.01 per hour, are above the current federal minimum wage of $17.75 per hour and will be subject to further increases once the new collective agreement is finalized.

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7 Having reviewed IPG-002 and it is position of both Air Canada and Air Canada Rouge that their flight attendants are paid for every hour they work as per the meaning of "work" as discussed in IPG-002.

Further, pursuant to a decision issued on February 6, 2020 in the matter of CHQ-Rouge-18-31, Arbitrator Eli Gedalof determined that Air Canada's compensation as it relates to flying duties did not violate the minimum wage provisions of the *Code* because that compensation "*offer*[ed] *a greater right or benefit*" as permitted by section 168(1.1)[8] of the *Code*.

With respect to non-flying related duties that are paid at one-half of the applicable hourly rate (e.g. when a flight attendant is in training), Arbitrator Gedalof, ordered that flight attendants are to receive the greater of the minimum wage and their collective agreement or policy entitlement (**Appendix B**). Air Canada and Air Canada Rouge have been complying with the requirements of this decision since it was issued.

6. If your workplace is unionized, has the collective agreement's grievance and arbitration process been used to resolve disagreements regarding unpaid work? If so, what was the nature of the grievance? What was the outcome?

Prior to the Minister of Labour consultation days in the fall if 2025, neither Air Canada nor Air Canada Rouge had ever received a grievance regarding unpaid work. On October 3, 2025, both companies received grievances containing such allegations. These grievances will now follow the grievance procedures set out in the collective agreement, which for Air Canada includes a review process with the parties' mutually agreed upon Chief Arbitrator, William Kaplan.

Air Canada and Air Canada Rouge's available records show that, prior to the filing of these recent grievances on October 3, 2025, the only grievances or complaints that had even tangential connections to disagreements regarding unpaid work were:

i) the grievances and complaints[9] filed in 2018 relating to allegations of failure to pay the minimum wage; and

ii) an August 16, 2006 decision from the Canada Industrial Relations Board on the pay and hours of Occupational Safety and Health Committee representatives: *Air Canada (Re)* [2006] C.I.R.B.D. No. 16. (**Appendix C**)

[8] Section 168 (1.1) of the *Code* provides: "Divisions II, IV, V and VIII do not apply to an employer and employees who are parties to a collective agreement that confers on employees rights and benefits at least as favourable as those conferred by those respective Divisions in respect of length of leave, rates of pay and qualifying periods for benefits, and, in respect of employees to whom the third party settlement provisions of such a collective agreement apply, the settlement of disagreements relating to those matters is governed exclusively by the collective agreement."

[9] It should be noted that in addition to the grievance against Air Canada Rouge that was the subject of the award from Arbitrator Gedalof, CUPE also filed three similar grievances against Air Canada (CHQ-18-28, CHQ-18-39, and CHQ-18-73) regarding compliance with provincial minimum wage rates. All of these grievances were settled on the basis of the terms of Arbitrator Gedalof's award in CHQ-rouge-18-31. Additionally, Air Canada Rouge was also advised of two confidential complaints that were filed with Employment and Social development Canada in 2018 alleging that the complainants were not being paid the minimum wage during training. Those two complaints were rejected by ESDC in 2020 on the basis that the award from Arbitrator Gedalof in CHQ-rouge-18-31 met the minimum wage required by Part III of the Code.

With respect to the former, these grievances and complaints were resolved through the arbitration award issued by Arbitrator Gedalof referenced above or through settlements that incorporated the terms of that award.

With respect to the latter decision from the CIRB, though it deals with a dispute over the compensation of flight attendants performing health and safety duties and not flight attendants performing their regular duties, the decision nonetheless contains or refers to some highly relevant submissions from CUPE and findings from the CIRB that are extremely relevant to the current Government of Canada probe into allegations that flight attendants are not compensated for all the hours they are at work. For example:

- In paragraph 26, in the "Analysis and Decision" section of the decision, the Board states "*<u>There is no real dispute that</u> while the rate of pay for flying is a rate which uses only flying hours for the basis of pay, the rate <u>is not really paid for hours flown alone</u>. The evidence indicated, without much dispute, that an average duty time to merit compensation for one hour of flying pay would range from 1.30 to 1.42 hours*" (emphasis added).

- Also in paragraph 26, the Board states, after mentioning factors like time away from base and the fact that Air Canada flight attendants are guaranteed 12 periods of 24 hours off in each month, that "*all of these factors are a part of the rate of pay of flight attendants, and it has been the accommodation reached and that reflected in the collective agreement that while flying, the rate of pay set out in the collective agreement for flight attendants at their level of seniority adequately compensates them, if that pay is based on flight time, or hours of flight. The flying rate is set in recognition of all the relevant factors to be compensated for* […] *in consideration of all the evidence before the Board, <u>it is a recognized fact that flight attendants are paid for more than their flying time</u>*" (emphasis added).

- Additionally, at paragraph 30, the Board, in summarizing the evidence presented by CUPE, stated that CUPE had acknowledged that flight time was to be compensated at a higher rate than safety and health work as "*there was extensive evidence*" from CUPE "*that a figure nearer to the duty/flying time ratio of 1.4 to 1 or even 1.3 to 1 would be a fairer translation*".

- Similarly, at paragraph 32 the Board notes that it would be "*unreasonable*" for hours spent performing safety and health duties "*be treated as hours flown".*

- Finally, at paragraph 41, the Board observes that the approach it is recommending "*accepts that the flying rate of pay should not be directly translated into a rate of pay for OSH work and does not accept that OSH work is directly comparable to flying*".

7. In your view, are the requirements respecting hours of work and minimum wage requirements under Part III of the *Code*, and related interpretations in IPG-002, clear? Please explain.

In Air Canada's view, the provisions of the *Code* on hours of work and minimum wage requirements and IPG-002 are all quite clear. In addition, as outlined in the discussion paper issued for this consultation, the *Code* allows an employer and a union *to negotiate an alternative rate of pay so long as employees receive at least the minimum wage.* We reiterate that the compensation model of flight attendants used at Air Canada results from many rounds of collective bargaining over several decades and has been agreed to and recommended to its members by a sophisticated, experienced union.

8. Are there any changes (e.g., additional guidance; regulatory or legislative amendments) that would help clarify the hours of work or minimum wage requirements to which flight attendants are entitled?

In Air Canada's view, no regulatory or legislative amendments are needed to clarify either hours of work or minimum wage entitlements.

9. Is there anything else you would like to bring to the Labour Program's attention regarding this issue?

Air Canada appreciates having the opportunity to raise the following items to the attention of the Labour Program:

i) <u>History and widespread use of flight attendant credit-based formula pay</u>

Air Canada's credit-based formula pay compensation model for flight attendants has a long history, having been used to pay flight attendants in an agreed upon manner for many decades. It is also worth noting that during the entirety of the time this model has been in place Air Canada flight attendants have been represented by an experienced, national union who did not raise allegations of flight attendants being 'unpaid' for work they perform until December 2022, as will be explained in greater detail below.

Air Canada's approach to flight attendant pay is also consistent with that widely used in the industry. Indeed, it was only when Delta Airlines, a non-unionized carrier, decided, in **April 2022**, to begin to specifically pay flight attendants during scheduled boarding time (a decision that reportedly occurred while union organizing efforts were underway at the airline[10]), that aspects of the position that had traditionally been considered to be within a duty period attracted additional pay.

[10] Forbes: Delta Flight Attendants Will Be Paid During Boarding—A First For U.S. Airlines.

That said, Delta's highly publicized move resulted in flight attendant unions beginning to adopt the argument that flight attendants perform "unpaid work". With respect to Air Canada and Air Canada Rouge, CUPE specifically began making these allegations at the following times:

- In **December 2022**, CUPE communicated that they would be meeting to discuss "widespread industry use of unpaid labour".
- In **February 2023**, CUPE announced the results of a union survey claiming that on average, CUPE-represented flight attendants performed 34.86 hours of "unpaid work" per month.
- In **April 2023**, CUPE:
    - organized a "National Day of Action to End Unpaid Work in the Airline Sector". Demonstrations were held at various airports across the country;
    - officially launched its "Unpaid Work Won't Fly campaign";
    - saw AC Component President Wesley Lesosky state publicly that "Unpaid work is a dirty secret in this industry".

Notwithstanding the above criticisms it is interesting to note that when CUPE was seeking to organize other flight attendants in Canada in the fall of 2023 and into 2024, long after its "unpaid work" campaign had begun, its promotional websites[11] continued to highlight elements of a credit-based formula pay system like "pay for ground delays", "pay for layovers" and "time away from bases (TAFB) premiums" which in Air Canada's submission confirms that the credit-based formula pay system remains a valued and desirable compensation model for flight attendants.

ii) Benefits of Flight Attendant credit-based formula pay

In the October 12, 2025 Discussion Paper provided by the Labour Program it was noted that "[m]any sectors have compensation structures with rates of pay that are different than the hourly rates set in the *Code*'s minimum wage provisions". It is Air Canada's submission that its flight attendant compensation structure falls into this category for the simple reason that its highly non-traditional nature allows for the flexibility and additional compensation opportunities that flight attendants value so much.

Indeed, it is as a result of the credit-based system, which includes elements such as maximum monthly limitations, minimum pay guarantees, generous overtime premiums and minimum days off, that flight attendants are able to enjoy compensation and benefits that many other Canadians do not. We note in particular that:

[11] Lynx CUPE FAQ .

- A service director at Air Canada earned an average of $80,000 in 2024, excluding incentive rewards, and health and pension benefits. The role of the service director is to oversee onboard service. All flight attendants are eligible to bid for this position.
- Air Canada flight attendants earned an average of $51,000 in 2024 year, excluding incentive rewards, and health and pension benefits. The average is influenced by the fact that about one third of flights attendants have been hired in the past 5 years. At the top of the scale, which they reach after 10 years, flight attendants can make more than $70,000.
- Air Canada Rouge flight attendants earned an average of $34,000 in 2024, excluding incentive rewards, and health and pension benefits. Air Canada Rouge flight attendants would typically have the ability to transfer to Air Canada mainline after a few years. About 75% of Rouge flight attendants have been hired in the past 5 years.
- The hourly pay ranges from $26.42 to $41.39 (after 5 years of service) for a Rouge flight attendant, from $30.02 to $63.07 (after 10 years of service) for a mainline flight attendant, and up to $87.01 for a service director.
- Flight attendants at Air Canada are guaranteed 12 days off per month, but over the course of the previous 12 months actually enjoyed on average 16 days off per month.
- Flight attendants at Air Canada Rouge are guaranteed 10 days off per month, but over the course of the previous 12 months actually enjoyed on average 14 days off per month.
- The credit system also provides flight attendants with a high degree of flexibility when bidding their monthly schedules – allowing some to complete their monthly hours in as little as 7 days of work per month.
- Every month Air Canada and Air Canada Rouge flight attendants are guaranteed a minimum of 65-80 hours of pay per month whether they work these hours or not.
- The maximum annual vacation entitlement for Air Canada flight attendants is 35 calendar days per year.
- With respect to time spent onboarding and similar tasks performed on the ground, these are captured within the Formula pay defined by the collective agreement, which covers the Duty Period (Commencing one hour prior to flight departure / ending 15 minutes after flight arrival). If the employee is requested to be on duty outside of these times or to perform service to passengers on the ground, the collective agreement provides for additional compensation.

We highlight these facts for the purpose of providing context but reiterate that Air Canada values the work and commitment of our over 10,000 flight attendants and is proud of the collective agreement we recently negotiated which included improvements to wages, pensions and benefits, and a mutually agreed-to modernization of compensation with the addition of a "Ground and Cabin Security Premium" for work performed on the ground.

CONCLUSION

In summary, Air Canada respectfully maintains that, although it acknowledges the rationale for this review due to the prominent nature of negotiations with flight attendants and the effect these matters have had — resulting in widespread misinformation regarding unpaid work — it is not necessary for the Minister or federal government to take further action. The compensation structure for flight attendants utilised by airlines, albeit complex, is fully compliant with the *Code*. is

In the alternative, if the Minister or government feels it necessary to make legislative changes in this context, it would be unjust to do so in a manner that amends the hours of work or pay rates of flight attendants in isolation from the rest of the collective agreement. As we have described above, the compensation model for flight attendants is one that was comprehensively bargained (and is very common in the industry) and involves a series of scheduling rules, pay guarantees, credits and premiums that are set out in a collective agreement. Accordingly, any changes i) would need to take into consideration how all of these elements interplay and provide flight attendants, as permitted by the *Code*, with greater rights or benefits than any specific statutory requirement and ii) should be left to the parties to address through the collective agreement and its processes.

It must also be understood that flight attendants are not the only airline employees who are compensated using a credit-based formula pay structure – pilots are also paid in this manner. Accordingly, any legislative changes that would impact such a pay structure would necessarily impact pilots as well.

Finally, CUPE's "Unpaid Work" campaign inaccurately reflects and mischaracterizes a sector-wide compensation model, that was negotiated by and agreed to both by CUPE and Air Canada, replicated by CUPE at other airlines, and is compliant with *Canada Labour Code* and minimum wage requirements.

We thank you for this opportunity to provide you these submissions and are of course available to respond to any questions.

APPENDIX A- Details of Flight Credits Calculation

1. **Block to block flight time** - This is the number of credits a flight attendant would receive for the period the aircraft is, or was scheduled to be, in motion (i.e. the hours and minutes between when the pilot releases the brake at the departure gate and applies the brake at the arrival gate). For clarity, it should be noted that a flight attendant receives the greater of the scheduled or actual time the aircraft is in motion

2. **Duty Period Guarantee (DPG)** – This is a guarantee that ensures that a flight attendant receives a minimum number of flight time credits that is tied to the length of time they were on duty[12] irrespective of how many hours or minutes the aircraft was (or was scheduled to be) in motion. This guarantee ensures that the total amount of time a flight attendant is physically at work (including while performing duties on the ground) during their shift is taken into consideration when calculating their pay.

At most airlines, including Air Canada Rouge, DPG is calculated by dividing the length of the duty period in half, however, at Air Canada, the parties previously negotiated a significantly more generous duty period guarantee, namely that a flight attendant's flight time credits for any duty period can be no less than the greater of four hours or the greater of their scheduled or actual total duty period minus four (4) hours.

3. **Trip Hour Guarantee (THG)** – This is a guarantee that ensures that a flight attendant receives a minimum number of flight time credits if their schedule has them laying over away from their home base. This guarantee is calculated by ensuring that the flight attendant receives at least one hour of flight time credits for every four (4) hours of the total time the flight attendant is away from their base (until a rest period occurs at home base).

4. **Minimum Monthly Guarantee** (MMG) – Finally, this guarantee ensures that a flight attendant who is available for duty for a full month receives a minimum number of flight time credits per month even if that flight attendant has not actually worked that number of hours or been on duty or away from their home base for those hours. Specifically, the minimum monthly pay guarantees at Air Canada and Air Canada Rouge are as follows:

	Air Canada	Air Canada Rouge
Service Director Blockholder	65 hours	n/a
Service Director on Reserve	75 hours	n/a
Flight Attendant Blockholder	65 hours	75 hours
Flight Attendant on Reserve	75 hours	80 hours

[12] The length of time a flight attendant is "on duty" is known as a duty period. In accordance with the collective agreement, a duty period generally begins one hour before a flight attendant's first flight and ends 15 minutes after the arrival of their last flight.

SUMMARY OF CREDITS AND GUARANTEES & EXAMPLES OF CALCULATIONS

To understand the above credits and guarantees, as well as the pay protections they provide to flight attendants, it is necessary to understand how they are computed. Accordingly, please find below a summary of how the calculations are performed.

First, for every duty period, the number of flight time credits a Flight Attendant receives is reviewed to ensure the flight attendant receives the greater of:

- The flight credits equal to the total block-to-block time for all flights in the duty period;
- The flight credits equal to their duty period duration minus 4 hours for Air Canada or half the duty period duration for Air Canada Rouge;
- A minimum of 4 hours of flight time credits.

Second, if a flight attendant's schedule had them laying over away from their home base, the number of flight credits that flight attendant receives is reviewed to ensure the flight attendant receives the greater of the:

- Sum of flight time credits for all duty periods in that pairing[13] (calculated as above);
- The flight credits calculated by dividing the entirety of the time they were away (or scheduled to be away – whichever is greater) from their home base, divided by 4.

Third, every month, the number of flight time credits a flight attendant has received is reviewed and the flight attendant is guaranteed to receive (even if they have not worked or been on duty or away from their base for these hours) the greater of:

- The sum of the flight time credits calculated as above;
- 65 to 80 flight time credits (as set out in the above chart).

[13] A pairing is a combined series of flights / duty periods that can range anywhere from 1 to 6 days in duration. For example, a pairing might consist of a flight from Montreal to Paris with a one-day layover in Paris and a return flight from Paris to Montreal.

Appendix B

In the Matter of an Arbitration

BETWEEN:

AIR CANADA

(THE "EMPLOYER)

AND

CANADIAN UNION OF PUBLIC EMPLOYEES,
AIR CANADA COMPONENT

(THE "UNION")

(Policy Gr: CHQ-Rouge-18-31
Failure to Comply with the *Canada Labour Code* Minimum Wage Provisions)

BEFORE: Eli A. Gedalof, Sole Arbitrator

APPEARANCES

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Carmela Iermieri, Chairperson, Grievance Committee
Dionne Solomon, Grievance Committee Member
Ivan Jovic, Grievance Committee Exec. Assistant
Kim Wentzel, Local 4095 President
Carolyn Bugnon, Local 4094 President
Guillaume Leduc, Local 4091 President

AWARD

1. This matter concerns a Union grievance dated May 28, 2018 alleging that the as a result of increases to Ontario's minimum wage, the compensation provisions in LOU 55: Air Canada Rouge fail to ensure that Cabin Personnel are paid the current minimum wage of $14/hr. The Employer responded to the grievance asserting that LOU 55 provides employees with a greater right or benefit than the minimum wage. The matter was duly referred to me for arbitration. In accordance with the grievance procedure under the collective agreement, the parties exchanged comprehensive written briefs and witness statements and attended at hearings on July 30 and November 12, 2019.

2. Having carefully reviewed the materials and having regard to the parties' representations, I issue the following award, to be effective March 1, 2020:

a) The compensation provisions under LOU55 related to flying duties offer a greater right or benefit than the current Ontario minimum wage;

b) Subject to the exceptions set out below, the Employer is required to pay Cabin Personnel assigned to ground duties that do not form part of flying duties, including but not limited to training, the greater of their collective agreement entitlement, the minimum wage, or payments made pursuant to policy where the total hourly compensation meets or exceeds minimum wage;

c) The requirements set out in paragraph b) do not apply to voluntary special ground assignments or online training, which is paid in accordance with the collective agreement.

d) As compensation for employees who were on maternity alternate duties for the period between January 1, 2018 and the end of the January 2020 block month, Air Canada shall pay the amounts indicated in Appendix A directly to the employees enumerated therein.

e) Within Thirty (30) days of this Award, the Company shall provide the Union with a list of employees who were based in the province of Ontario and who attended training between January 1, 2018 and the end of the January 2020 block month. Air Canada shall pay these employees the difference between what they received as compensation and the Ontario provincially legislated minimum wage at the time of the training for each hour of training worked.

f) The payments in paragraphs d) and e) shall be made to active employees within Ninety (90) days of this award and to inactive employees upon their return to active service.

3. I remain seized with the implementation of this award.

Dated at Toronto, Ontario, this 6th day of February 2020.

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Eli A. Gedalof
Sole Arbitrator

Appendix C

Air Canada (Re)

Canada Industrial Relations Board Decisions

Canada Industrial Relations Board

J. Paul Lordon, Q.C., sitting alone pursuant to section 14(3)(c) of the Canada Labour Code (Part I - Industrial Relations) (the Code)

Heard: Toronto, Ontario, November 21, 2003, March 22 and

26, 2004, June 9 - 11, 2004, October 25 - 27, 2004,

November 16 and 17, 2004, and July 20 and 21, 2005, and

Montréal, Quebec, January 27 - 29, 2004, February 9 -

11, 2004, and December 8 and 9, 2004.

Decision: August 16, 2006.

Board File: 24034-C

[2006] C.I.R.B.D. No. 16 | *[2007] D.C.C.R.I. no 16* | *2006 CIRB 358*

Canadian Union of Public Employees, Airline Division, ***Air Canada*** Component, complainant, and ***Air Canada***, respondent

(44 paras.)

Case Summary

Summary:

Application pursuant to sections 19.1, 94(1), 94(3) and 97(1) of the *Canada Labour Code, Part I*, and sections 133, 134.1, 135, 135.1, 147 and 157 of the *Canada Labour Code, Part II* (the *Code*).

Health and safety — Payment of wages — Employer interference — Aeronautics — After the parties' failure to reach an agreement on the issues of how many hours should be worked by the Occupational Safety and Health Committee (OSH) representatives for their pay, and how much work time should be allocated for the committee work, the employer unilaterally announced it would implement a policy concerning payment of wages for flight attendants involved in safety and health committee matters — The rate of pay provided for in the collective agreement is based on the hours flown — The collective agreement did not specify the [page2] rate of pay of flight attendants on OSH duties — The Board noted that a key purpose of the Health and Safety provisions (Part II) of the Code, since the 2000 amendments, is that employees on OSH duties must not thereby lose income — The Board rejected the option that the policy of the employer should govern, because there is a collective agreement in force between the parties, and that collective agreement must govern — Employees on OSH duties should continue to be paid regularly for their time worked, unless a premium rate applies, and then they should be paid at a premium rate — The challenge in this case is that there is nothing in the collective agreement in respect of hours to be worked to merit the level of compensation which part II of the Code guarantees must be paid — Lacking agreement and clear collective agreement direction, the time to be worked must be set out at a level which reasonably reflects the regular rate of pay or an applicable premium rate — After reviewing the facts specific to this case, the Board stated that no flight attendant working 138 hours a month should suffer a loss of pay from their regular flying pay standard, and, at the 138-hour level, should be compensated as if they had flown 80 hours, the normal monthly flight hours — The other aspect of this case related to the hours to be worked and the number of employees to be flight released to perform OSH duties — Part II of the Code makes it

clear that this and other functions of the Health and Safety Committees are to be [page3] performed or as designated by the joint chairpersons - - The employer cannot unilaterally impose changes to the Health and Safety Committee, nor unilaterally assume any functions which the statute directs the committee to perform, now that the committees have been structured — Because the employer had not proceeded to implement the announced policy, the Board did not make any findings that the employer had been in violation of sections 94(1) and 147 of the Code.

Case Cited:

Air Canada, Lester B. Pearson International Airport, and Canadian Union of Public Employees (CUPE) Division Health and Safety, Airline Division, Decision no. 92-005, April 2, 1992 (Labour Canada).

Statutes Cited:

Canada Labour Code (Part I - Industrial Relations), ss. 19.1; 94(1); 94(3); 97(1).

Canada Labour Code (Part II - Occupational Health and Safety), ss. 133; 134.1; 134.1(4); 135; 135.1; 135.1(5); 135.1(11); 147; 157.

Companies' Creditors Arrangement Act.

Appearances

Ms. Beth Symes, for Canada Union of Public Employees, Airline Division, Air Canada Component;

[page4] Mr. John D. Lewis, for Air Canada.

REASONS FOR DECISION

I - Nature of the complaint

1 The present matter commenced on November 5, 2003, with the filing of an application by Canadian Union of Public Employees, Airline Division, Air Canada Component (CUPE, Air Canada) pursuant to the *Code* sections 19.1, 94(1), 94(3) and 97(1) and the *Canada Labour Code (Part II - Occupational Health and Safety*) sections 133, 134.1, 135, 135.1, 147 and 157.

2 The relevant portions of the sections and subsections of Part I of the *Code* indicate as follows:

> 19.1 The Board may, on application by a trade union, an employer or an affected employee, make any interim order that the Board considers appropriate for the purpose of ensuring the fulfilment of the objectives of this Part.
>
> ...
>
> 94.(1) No employer or person acting on behalf of an employer shall
>
> (a) participate in or interfere with the formation or administration of a trade union or the representation of employees by a trade union; or
>
> (b) contribute financial or other support to a trade union.

[page5]

...

(3) No employer or person acting on behalf of an employer shall

(a) refuse to employ or to continue to employ or suspend, transfer, lay off or otherwise discriminate against any person with respect to employment, pay or any other term or condition of employment or intimidate, threaten or otherwise discipline any person, because the person

(i) is or proposes to become, or seeks to induce any other person to become, a member, officer or representative of a trade union or participates in the promotion, formation or administration of a trade union,

(ii) has been expelled or suspended from membership in a trade union for a reason other than a failure to pay the periodic dues, assessments and initiation fees uniformly required to be paid by all members of the trade union as a condition of acquiring or retaining membership in the trade union,

(iii) has testified or otherwise participated or may testify or otherwise participate in a proceeding under this Part,

(iv) has made or is about to make a disclosure that [page6] the person may be required to make in a proceeding under this Part,

(v) has made an application or filed a complaint under this Part, or

(vi) has participated in a strike that is not prohibited by this Part or exercised any right under this Part;

(b) impose any condition in a contract of employment that restrains, or has the effect of restraining, an employee from exercising any right conferred on them by this Part;

(c) suspend, discharge or impose any financial or other penalty on an employee, or take any other disciplinary action against an employee, by reason of their refusal to perform all or some of the duties and responsibilities of another employee who is participating in a strike or subject to a lockout that is not prohibited by this Part;

(d) deny to any employee any pension rights or benefits to which the employee would be entitled but for

(i) the cessation of work by the employee as the result of a lockout or [page7] strike that is not prohibited by this Part, or

(ii) the dismissal of the employee contrary to this Part;

(d.1) where the requirements of paragraphs 89(1)(a) to (d) have been met, cancel or threaten to cancel a medical, dental, disability, life or other insurance plan, whether administered by the employer or otherwise, that benefits employees, so long as the bargaining agent tenders or attempts to tender to the employer payments or premiums sufficient to continue the plan;

(d.2) where the requirements of paragraphs 89(1)(a) to (d) have been met and the bargaining agent has tendered or attempted to tender to the employer payments or premiums sufficient to continue an insurance plan referred to in paragraph (d.1), deny or threaten to deny to any employee any benefits under the plan to which the employee was entitled before those requirements were met;

(e) seek, by intimidation, threat of dismissal or any other kind of threat, by the imposition of a financial or other penalty or by any other means, to compel a person to refrain from becoming or to cease [page8] to be a member, officer or representative of a trade union or to refrain from

(i) testifying or otherwise participating in a proceeding under this Part,

(ii) making a disclosure that the person may be required to make in a proceeding under this Part, or

(iii) making an application or filing a complaint under this Part;

(f) suspend, discharge or impose any financial or other penalty on a person employed by them, or take any other disciplinary action against such a person, by reason of that person having refused to perform an act that is prohibited by this Part; or

(g) bargain collectively for the purpose of entering into a collective agreement or enter into a collective agreement with a trade union in respect of a bargaining unit, if another trade union is the bargaining agent for that bargaining unit.

...

97.(1) Subject to subsections (2) to (5), any person or organization may make a complaint in writing to the Board that

[page9]

(a) an employer, a person acting on behalf of an employer, a trade union, a person acting on behalf of a trade union or an employee has contravened or failed to comply with subsection 24(4) or 34(6) or section 37, 47.3, 50, 69, 87.5 or 87.6, subsection 87.7(2) or section 94 or 95; or

(b) any person has failed to comply with section 96.

3 The relevant provisions of Part II of the *Code* respecting occupational health and safety indicate:

133.(1) An employee, or a person designated by the employee for the purpose, who alleges that an employer has taken action against the employee in contravention of section 147 may, subject to subsection (3), make a complaint in writing to the Board of the alleged contravention.

(2) The complaint shall be made to the Board not later than ninety days after the date on which the complainant knew, or in the Board's opinion ought to have known, of the action or circumstances giving rise to the complaint.

(3) A complaint in respect of the exercise of a right under section 128 or 129 may not be made under this section unless the employee has complied with [page10] subsection 128(6) or a health and safety officer has been notified under subsection 128(13), as the case may be, in relation to the matter that is the subject-matter of the complaint.

(4) Notwithstanding any law or agreement to the contrary, a complaint made under this section may not be referred by an employee to arbitration or adjudication.

(5) On receipt of a complaint made under this section, the Board may assist the parties to the complaint to settle the complaint and shall, if it decides not to so assist the parties or the complaint is not settled within a period considered by the Board to be reasonable in the circumstances, hear and determine the complaint.

(6) A complaint made under this section in respect of the exercise of a right under section 128 or 129 is itself evidence that the contravention actually occurred and, if a party to the complaint proceedings alleges that the contravention did not occur, the burden of proof is on that party.

...

134.1(1) For the purposes of addressing health and safety matters that apply to the work, undertaking or business of an employer, [page11] every employer who normally employs directly three hundred or more employees shall establish a policy health and safety committee and, subject to section 135.1, select and appoint its members.

(2) An employer who normally employs directly more than twenty but fewer than three hundred employees may also establish a policy committee.

(3) An employer may establish more than one policy committee with the agreement of

(a) the trade union, if any, representing the employees; and

(b) the employees, in the case of employees not represented by a trade union.

(4) A policy committee

(a) shall participate in the development of health and safety policies and programs;

(b) shall consider and expeditiously dispose of matters concerning health and safety raised by members of the committee or referred to it by a work place committee or a health and safety representative;

(c) shall participate in the development and monitoring of a program for the prevention of hazards in the work place that also [page12] provides for the education of employees in health and safety matters;

(d) shall participate to the extent that it considers necessary in inquiries, investigations, studies and inspections pertaining to occupational health and safety;

(e) shall participate in the development and monitoring of a program for the provision of personal protective equipment, clothing, devices or materials;

(f) shall cooperate with health and safety officers;

(g) shall monitor data on work accidents, injuries and health hazards; and

(h) shall participate in the planning of the implementation and in the implementation of changes that might affect occupational health and safety, including work processes and procedures.

(5) A policy committee may request from an employer any information that the committee considers necessary to identify existing or potential hazards with respect to materials, processes, equipment or activities in any of the employer's work places.

(6) A policy committee shall have full access to all of the government and [page13] employer reports, studies and tests relating to the health and safety of employees in the work place, or to the parts of those reports, studies and tests that relate to the health and safety of employees, but shall not have access to the medical records of any person except with the person's consent.

(7) A policy committee shall meet during regular working hours at least quarterly and, if other meetings are required as a result of an emergency or other special circumstances, the committee shall meet as required during regular working hours or outside those hours.

135.(1) For the purposes of addressing health and safety matters that apply to individual work places, and subject to this section, every employer shall, for each work place controlled by the employer at which twenty or more employees are normally employed, establish a work place health and safety committee and, subject to section 135.1, select and appoint its members.

...

(4) The following factors are to be considered for [page14] the purposes of subsection (3):

(a) the risk of occupational injury or illness from hazardous substances or other conditions known to be associated with the type of activity conducted in that type of work place;

(b) whether the nature of the operation of, and the processes and equipment used in, the work place are relatively free from hazards to health and safety in comparison with similar operations, processes and equipment;

(c) the physical and organizational structure of the work place, including the number of employees and the different types of work being performed; and

(d) during the current calendar year and the two calendar years immediately before it,

(i) the number of disabling injuries in relation to the number of hours worked in the work place,

(ii) the occurrence of incidents in the work place having serious effects on health and safety, and

(iii) any directions issued in respect of contraventions of paragraph 125(1)(c), (z.10) or (z.11), and any contraventions of this Part [page15] that had serious consequences in respect of the work place.

(5) A request for an exemption must be posted in a conspicuous place or places where it is likely to come to the attention of employees, and be kept posted until the employees are informed of the Minister's decision in respect of the request.

...

(7) A work place committee, in respect of the work place for which it is established,

(a) shall consider and expeditiously dispose of complaints relating to the health and safety of employees;

(b) shall participate in the implementation and monitoring of the program referred to in paragraph 134.1(4)(c);

(c) where the program referred to in paragraph 134.1(4)(c) does not cover certain hazards unique to the work place, shall participate in the development, implementation and monitoring of a program for the prevention of those hazards that also provides for the education of employees in health and safety matters related to those hazards;

[page16]

(d) where there is no policy committee, shall participate in the development, implementation and monitoring of a program for the prevention of hazards in the work place that also provides for the education of employees in health and safety matters related to those hazards;

(e) shall participate in all of the inquiries, investigations, studies and inspections pertaining to the health and safety of employees, including any consultations that may be necessary with persons who are professionally or technically qualified to advise the committee on those matters;

(f) shall participate in the implementation and monitoring of a program for the provision of personal protective equipment, clothing, devices or materials and, where there is no policy committee, shall participate in the development of the program;

(g) shall ensure that adequate records are maintained on work accidents, injuries and health hazards relating to the health and safety of employees and regularly monitor data relating to those accidents, injuries and hazards;

(h) shall cooperate with health and safety officers;

(i) shall participate in the implementation of [page17] changes that might affect occupational health and safety, including work processes and procedures and, where there is no policy committee, shall participate in the planning of the implementation of those changes;

(j) shall assist the employer in investigating and assessing the exposure of employees to hazardous substances;

(k) shall inspect each month all or part of the work place, so that every part of the work place is inspected at least once each year; and

(l) where there is no policy committee, shall participate in the development of health and safety policies and programs.

(8) A work place committee, in respect of the work place for which it is established, may request from an employer any information that the committee considers necessary to identify existing or potential hazards with respect to materials, processes, equipment or activities.

(9) A work place committee, in respect of the work place for which it is established, shall have full access to all of the government and employer reports, studies and tests [page18] relating to the health and safety of the employees, or to the parts of those reports, studies and tests that relate to the health and safety of employees, but shall not have access to the medical records of any person except with the person's consent.

(10) A work place committee shall meet uring regular working hours at least nine times a year at regular intervals and, if other meetings are required as a result of an emergency or other special circumstances, the committee shall meet as required during regular working hours or outside those hours.

135.1(1) Subject to this section, a policy committee or a work place committee shall consist of at least two persons and at least half of the members shall be employees who

(a) do not exercise managerial functions; and

(b) subject to any regulations made under subsection 135.2(1), have been selected by

(i) the employees, if the employees are not represented by a trade union, or

(ii) the trade union representing employees, in consultation with any employees who are not so represented.

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(2) Despite subsection (1) and if provided in a collective agreement or other agreement, the members of a policy committee may include persons who are not employees.

(3) If there is no policy committee, a work place committee may, when dealing with an issue that would have come within the responsibilities of a policy committee, select two additional members. Unless otherwise provided in a collective agreement or other agreement, one of the additional members shall be an employee who meets the criteria set out in paragraphs (1)(a) and (b).

(4) If a trade union fails to select a person under subparagraph (1)(b)(ii), a health and safety officer may notify in writing the local branch of the trade union, and shall send a copy of any such notification to the trade union's national or international headquarters and to the employer, indicating that the committee is not established until a person is selected in accordance with subparagraph (1)(b)(ii).

(5) If no person is selected under paragraph (1)(b), the employer shall perform the functions of the committee until a [page20] person is selected and the committee is established.

(6) The employer and employees may select alternate members to serve as replacements for members selected by them who are unable to perform their functions. Alternate members for employee members shall meet the criteria set out in paragraphs (1)(a) and (b).

(7) A committee shall have two chairpersons selected from among the committee members. One of the chairpersons shall be selected by the employee members and the other shall be selected by the employer members.

(8) The chairpersons of a committee shall jointly designate members of the committee to perform the functions of the committee under this Part as follows:

(a) if two or more members are designated, at least half of the members shall be employee members; or

(b) if one member is designated, the member shall be an employee member.

(9) A committee shall ensure that accurate records are kept of all of the matters that come before it and that minutes are kept of its meetings. The committee shall make [page21] the minutes and records available to a health and safety officer at the officer's request.

(10) The members of a committee are entitled to take the time required, during their regular working hours,

(a) to attend meetings or to perform any of their other functions; and

(b) for the purposes of preparation and travel, as authorized by both chairpersons of the committee.

(11) A committee member shall be compensated by the employer for the functions described in paragraphs (10)(a) and (b), whether performed during or outside the member's regular working hours, at the member's regular rate of pay or premium rate of pay, as specified in the collective agreement or, if there is no collective agreement, in accordance with the employer's policy.

(12) Subsections (10) and (11) apply to alternate members only while they are actually performing the functions of the committee member they are replacing.

(13) No person serving as a member of a committee is personally liable for anything done or omitted to be done by the person in good faith under the authority or purported authority of this Part.

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(14) Subject to subsections 134.1(7) and 135(10) and any regulations made under subsection 135.2(1), a committee shall establish its own rules of procedure in respect of the terms of office, not exceeding two years, of its members and the time, place and frequency of regular meetings of the committee and may establish any rules of procedure for its operation that it considers advisable.

...

147. No employer shall dismiss, suspend, lay off or demote an employee, impose a financial or other penalty on an employee, or refuse to pay an employee remuneration in respect of any period that the employee would, but for the exercise of the employee's rights under this Part, have worked, or take any disciplinary action against or threaten to take any such action against an employee because the employee

(a) has testified or is about to testify in a proceeding taken or an inquiry held under this Part;

(b) has provided information to a person engaged in the performance of duties under this Part regarding the conditions of work affecting the health or safety of the employee [page23] or of any other employee of the employer; or

(c) has acted in accordance with this Part or has sought the enforcement of any of the provisions of this Part.

...

156.(1) Despite subsection 14(1), the Chairperson or a Vice-Chairperson of the Board, or a member of the Board appointed under paragraph 9(2)(e), may dispose of any complaint made to the Board under this Part and, in relation to any complaint so made, that person

(a) has all the powers, rights and privileges that are conferred on the Board by this Act other than the power to make regulations under section 15; and

(b) is subject to all the obligations and limitations that are imposed on the Board by this Act.

(2) The provisions of Part I respecting orders and decisions of and proceedings before the Board under that Part apply in respect of all orders and decisions of and proceedings before the Board or any member thereof under this Part.

156.1(1) The Governor in Council may, on the recommendation of the Treasury Board, fix the fees to be paid for [page24] services, facilities and products provided by the Minister under this Part or within the purpose of this Part.

(2) Fees fixed under subsection (1) may not exceed the costs to Her Majesty in right of Canada in respect of those items or matters.

II - Background and facts

4 The present dispute is not one of recent origin, although the circumstances leading to the present complaint, as will be discussed below, reflect the more recent situation of the employer, Air Canada. The predecessor of the present dispute was considered by Mr. S. Cadieux, Regional Safety Officer under the *Canada Labour Code* in Toronto, on January 23 and 25, 1992 (see *Air Canada, Lester B. Pearson International Airport, and Canadian Union of Public Employees (CUPE) Division Health and Safety, Airline Division*, Decision no. 92-005, April 2, 1992 (Labour Canada) (the Safety Officer's decision)). At that time, the Regional Safety Officer noted:

> The issue of payment of wages for flight attendants involved in safety and health committee matters is not new for the parties before me. This issue has been at the centre of unsuccessful discussions during the negotiations for their collective agreement. The mood was not one of [page25] cooperation and, I believe, remains dominated by the sentiment of adversity. ...
>
> (page 1)

5 The unsuccessful discussions and the adversarial mood have continued in respect of the payment of wages issue, even to the present. The operative *Canada Labour Code, Part II*, provisions in respect of occupational health and safety were substantially amended in 2000 (*Bill C-12, An Act to amend the Canada Labour Code (Part II), s.c. 2000*, c. 20) and although the amendments provided significant additional details respecting the functions, structure and operations of health and safety committees, the role of the employer and that of the employees (whether or not represented by a trade union) in respect of them - the essential dispute that was under consideration in 1992 - remained unresolved. As a result of the decision, nevertheless, although the employer remained unsatisfied and eventually, as will be described below, changed its approach, the employer did pay the union health and safety representatives at their flying duty rate.

6 There were essentially two aspects of the dispute at that time. The first aspect concerned the payment of wages for those employees - for present purposes we are [page26] talking about Air Canada flight attendants - who were called upon to perform safety and health duties, instead of their regular duties as flight attendants providing services during Air Canada's flight operations. The second aspect related to the scheduling of employees ordinarily on flying duties, to attend safety and health committee meetings. In 1992, it was alleged that employees had been scheduled to attend safety and health committee meetings following flights of up to ten hours. In some cases, flight attendants had been paid at the flying duty rate to attend the Occupational Safety and Health Committee (OSH) meetings, in other cases they were paid at the ground duty rate of pay, which was about one half of the flying duty rate. Hence, two issues were then in dispute: what wage should OSH representatives be paid and how should their duties be set and scheduled. Fundamentally the same issues continue to be in dispute, although many related issues have arisen.

7 The statutory provisions in effect in 1992 were substantially changed by the 2000 amendments to the *Code, Part II*, as mentioned at paragraph 5. Before considering the current statutory provisions and their indications in respect of the issues in dispute, it is useful to consider certain of the factors which led the issues in dispute to presently come before the Board. It is first of all of relevance to consider that following the merger of the former Air [page27] Canada and Canadian Airlines International Limited commencing in January 2000, and the decrease in air traffic following the terrorist threat, which emerged in September 2001, Air Canada went through a period of serious economic stress and consequent recognition under the *Companies' Creditors Arrangement Act* (CCAA). During the period leading up to the present dispute, therefore, Air Canada was seeking to restructure the safety and health committees of the two merging airlines into one, being in an environment in which the cost pressures on the company were posing a serious threat to its continuing operations. In this environment, not surprisingly, all aspects of airline costs were open to be reconsidered, and the payment of wages for OSH work was not an exception. Additional impetus for the review of OSH operations had arisen because of the aforementioned 2000 amendments to the *Code, Part II*.

8 During the summer and fall of 2002, these changes and pressures led the parties charged by the amended *Code* provisions with the relevant OSH responsibilities, (Air Canada and CUPE, Air Canada) to reach agreements on the procedures and guidelines for the relevant Health and Safety Committees and the national policy committee. Workplace committees were set up at the six major workplaces of Air Canada from Halifax to [page28] Vancouver and their members were identified. Terms of Reference for the National Health and Safety In Flight Service Health and Safety Policy Committee, (hereinafter "PHSC") newly required by the amended legislation were agreed upon. However, the parties did not agree on the basis for the payment of wages to flight attendants appointed to OSH work, whether on the PHSC or on the workplace committees. The In Flight Health and Safety Policy Committee Terms of Reference Agreement, which was concluded in the fall of 2002, indicated that the payment of wages would be established and completed by January 31, 2003. Additionally, Air Canada and CUPE, Air Canada had not reached agreement respecting the number of employees required to perform health and safety functions on the six Local Joint Workplace Health and Safety Committees (WHSC), as noted, located from coast-to-coast at Halifax, Montréal, Toronto, Winnipeg, Calgary and Vancouver. Eventually, however, as the result of a joint "mapping exercise," although there was no agreement on the number of representatives required to do the work, there was general agreement on the tasks required to be done. The union selected the employee members of the committees (PHSC and WHSC) and the employer appointed management representatives. At the national level (PHSC), CUPE's National President selected the employee representatives, at the workplace level, the Local President at each base [page29] selected the WHSC employee representatives. However, as mentioned above, the issue of exactly how many representatives, full-time or part-time, were required at each locality to perform WHSC functions was not finally agreed upon. In addition, there was not a final consensus respecting the time required for PHSC functions, although there was a measure of agreement upon the work and functions.

9 Thus, following the agreement on the procedures and guidelines for the WHSC, and in respect of the Terms of Reference for the PHSC, efforts continued to reach agreement respecting the basis of payment of wages for representatives appointed to the committees by the union and in respect of the actual number of representatives required to fully and effectively perform the health and safety functions required to be performed. There was also a measure of lingering disagreement respecting which functions had to be done by which representatives, employee or management, particularly in respect of the workplace committees.

10 The number of actual members on the PHSC for Air Canada flight attendants included a full-time union co-chair, two additional full-time representatives and two part-time representatives, as well as five Air Canada management representatives. The WHSC included six local union and employer co-chairs as well as additional local [page30] union health and safety representatives.

11 The provisions of the legislation have been set out above. However, some further comment must be made in respect of those legislative provisions, which relate to the payment of wages to union representatives, to the establishment of the committees themselves and to the identification of the work to be performed by the committees. It is useful to first consider the payment of wages to the employees in question.

A - Payment of Wages

12 This topic is governed by the provisions of section 135.1 of the *Code, Part II*, as amended. The terms of the relevant subsection, 135.1(11), set out above, indicate that members of the policy and workplace committees shall be compensated by the employer for the functions to be performed, at their regular rate of pay or premium rate of pay, as specified in the collective agreement, or if there is no collective agreement, in accordance with the employer's policy.

B - Duties of Policy Committee

13 The legislation, as reference to it will disclose, makes the establishment of a policy Health and Safety Committee mandatory and sets out in section 134.1(4) the duties to be performed by that committee. Those duties [page31] include the development of health and safety policies and programs; the consideration of referred issues; the development and monitoring of a program for the prevention of workplace hazards; the education of employees in health and safety issues; the participation to the extent considered necessary in inquiries, investigations, studies and inspections pertaining to occupational health and safety; personal protection equipment, clothing and materials development and monitoring; the monitoring of data on work accidents, injuries and health hazards; and implementation in respect of changes that might affect occupational health and safety, including work processes and procedures. The committee is broadly empowered to request relevant information from the employer and is to have full access to all relevant reports, studies and tests, whether originating from the employer or from government. Meetings are to be held at least quarterly, during regular working hours, and otherwise as required.

C - Duties of Workplace Committees

14 Workplace committees are generally required for each location at which twenty or more employees are normally employed. Workplace committees are to consider and expeditiously dispose of complaints relating to the health and safety of employees; participate in the [page32] implementation and monitoring of the workplace hazard program and in workplace hazard education, including responding to hazards unique to the particular workplace; participate generally in all inquires, investigations, studies and inspections pertaining to the health and safety of employees; ensure that adequate records are maintained on work accidents, injuries and health hazards; participate in the implementation of changes to the workplace, including work processes and procedures if they might affect occupational health and safety; and, each month, inspect all or part of the workplace so that every part of the workplace is inspected at least once a year. The workplace committee must meet at least nine times a year at regular intervals and has full access to all required information.

15 Obviously, the provisions respecting both PHSCs and WHSCs set out serious and comprehensive powers and responsibilities respecting workplace health and safety. Such committees, whether policy or workplace committees, must be composed of at least half of employees, and fall under the chairmanship of two chairpersons. One of the chairpersons is selected by the employer members, and one by the employee members. The performance of the identified functions of the committees is to be carried out by members jointly designated by the co-chairpersons, [page33] subject to the requirement that at least half of those designated are to be employee members. Such jointly designated members are entitled to take the time necessary to attend meetings and perform their assigned functions, including preparation and travel, and as previously discussed, must be compensated by the employer at the rate of pay as specified in the collective agreement.

16 Although the Air Canada Health and Safety Committee Procedures and Guidelines and the Terms of Reference for the In Flight Service Health and Safety Policy Committees were agreed upon subject to the anticipated settlement of the payment of wages (POW) issue, which were expected to be completed by January 31, 2003, and despite the fact that the "mapping"process generally established the required functions, the POW issue was not settled and agreed upon by that date. As they had failed to do for a number of years, the discussions and negotiations in respect of the issue did not conclude with the agreement. A consequence of this was that the status of the Terms of Reference came in doubt. In January of 2003, CUPE Air Canada, had proposed a resolution to the issue based upon an allocation of Health and Safety personnel resources according to a ratio. At each base, resources were to be allotted on a formula which anticipated that one hour of health and safety functions would be performed [page34] for each five crew members there. The proposed ratio was not to include work arising out of incidents and emergencies. One of the indicated advantages of this approach was the elimination of the manager's discretion to release members from flight duties to undertake health and safety functions and responsibilities. CUPE Air Canada's proposal did not meet favour with Air Canada management, who in February, presented a counter-proposal.

17 Air Canada's management proposal was to be considered at a meeting scheduled for February 20, 2003. It analysed CUPE's proposal as based upon 95 hours a month of required services as well as making provisions for compensation for hours in each month in excess of 95. Air Canada's counter-proposal of February included both a payment plan and a "displacement plan." It proposed payment of a salary based upon either a twelve-month average of the flying compensation, or based upon bidding for a block of flying time and being compensated as if the bid time had been flown, although in fact it would not be. The system of bidding and then being compensated as if the hours bid were flown, although in actuality they were not, is referred to by the parties as "shadow bidding."

18 The bidding system utilized at Air Canada by flight attendants is a complex system established in the [page35] applicable collective agreement. Each month a comprehensive list of available blocks or "pairings" is published by the employer, and flight attendants bid on those set out, being awarded a block according to their preference, provided that their seniority will allow them to hold it. Blocks may vary in terms of their structure, but the fundamental criterion for salary determination is the "total credit" or hours to be flown in the month. At the time of the present complaint, this ranged generally from 72 hours a month to 84 or 85, although there are some exceptions and the employer, as part of negotiations at the time of its CCAA reorganization, negotiated an increase in the average number of monthly hours. The evidence indicated that the average hours flown in the blocks had been 75 hours, before being increased during the CCAA process to 80 hours. Additionally, employees have the option of topping up their hours if additional flying hours become available. The practice has been that the health and safety representatives may "shadow bid" and then be released from flying duties. Those flight attendants who work part-time at OSH and also fly are paid according to the number of hours flown and then paid at the flying rate for their time performing OSH duties. In respect of the full-time OSH representatives, all the flying is notional only; they are flight released and paid according to the hours that they would have flown. Eighty [page36] hours is recognized as a full month's work, and hours in excess of that level are banked. Banking was very common since more than 80 hours was typically required from a full-time representative to complete all the OSH work. Air Canada's February 20th proposal would have allowed this approach to compensation to continue should the affected employees so choose, but it would not have allowed hours to be banked. An additional feature of the February 20th Air Canada proposal was a displacement plan setting out the time for each local base that it was prepared to displace employees from their flying duties for their health and safety responsibilities. This ranged from three full-time equivalents at Toronto to one quarter full-time equivalent at Halifax, Winnipeg and Calgary.

19 This proposal in turn was unsatisfactory to the CUPE, Air Canada representatives in respect of the wages proposed and the time proposed to be allocated to health and safety. Accordingly, CUPE then forwarded a further counter-proposal in April of 2003. It is not necessary to describe this proposal in detail; it was never acceptable to Air Canada and was never put into force. However, the general [page37] rationale behind the proposal is of importance and may be usefully considered. In general, the proposal suggested that the CUPE health and safety representatives should work 95 hours a month for their ordinary rate of pay in the category in which they stood on a yearly average bid, with guaranteed days off each month as in the collective agreement, and should have the right to bank hours in excess of 95 hours a month for future compensation. The idea which led to this proposal and the approach consistently insisted upon by CUPE for POW compensation is simply that health and safety time should be treated as essentially equivalent to flying time under the collective agreement and members should be compensated accordingly. An hour of OSH is equivalent to an hour of flying. When Air Canada did not agree to this proposal, on May 23, 2003, a communication from the National Policy Committee Union Co-Chairperson, France Pelletier, indicated that the Policy Committee Terms of Reference agreed upon in the fall of 2002 should be viewed as null and void, and that local union workplace committee members would not agree to similar terms of reference until the payment of wages issue was resolved. Although discussions did continue suggesting some possibility of movement and the union even offered a number of amendments on July 18, 2003, the union's position was that the changes responded to collective agreement changes only. The apparent [page38] impasse continued over the summer of 2003, as the employer's financial position continued to decay. On September 29, 2003, failing agreement, the employer unilaterally formulated and forwarded to the union a "new" policy.

20 The new policy of September 29, 2003, was alleged to be in line with the then effective CUPE Flight Attendant contract of May 29, 2003, and to accord with the then effective CUPE salary structure. The policy was to be effective for November 2003 and beyond. Rather than 95 hours of work a month, the policy proposed 42.5 hours of work a week, consistent with the company policy for management and the ATS group. The level of the salary to be paid would be based on the 12-month average equivalent flying salary or on a month-to-month shadow bid for blocks.

21 Air Canada's policy, consistent with the position which had evolved over 2003, suggested that 4.25 hours of flying pay was equivalent to an 8.5 hour office work day. It indicated that time could not be banked, and that per [page39] diem expenses for travel as in the collective agreement, would be paid. The displacement from flight duties for health and safety to be allowed significantly reduced the levels previously suggested: for Toronto from 3 to 1.5, for Vancouver from 2 to 1, and for Montréal from 1 to 0.75. It indicated that for the policy committee, the Chair and Vice-Chair would be released full-time and three additional members released on a half-time basis. The apparent reason for this was explained during the evidence of the Air Canada witnesses, since the time to be worked was essentially being doubled, the number of committee members required to do it could be halved.

22 The union then wrote on October 14, 2003, indicating its opposition to the proposed new policy. It asked that existing practices including the one OSH hour for one flying hour ratio be maintained for representative wage payment. It suggested the matters in issue should be resolved by the In Flight Services Policy Health and Safety Committee.

23 Air Canada responded on October 17 and 28, 2003, indicating that failing agreement, which had not been possible, Air Canada would be unilaterally implementing the wages policy for the November [page40] block month. It was argued that the policy met all the requirements of the *Code*.

24 The impasse continued and Air Canada's insistence upon it led to the present complaint. The impasse essentially relates to the two issues of how many hours should be worked by the OSH representatives for their pay, and how much work time should be allocated for the committee work. However, the initial application of November 5, 2003, raised a number of additional questions and related issues, the answers to which will be of assistance in allowing the parties to establish functional committees in accordance with the purposes and intent of the statute. Those questions were:

5. Can Air Canada:

(a) unilaterally impose changes to the health & safety committees even when the committees agreed otherwise?

(b) change the system of compensating the Union representatives such that they are no longer receiving their regular rate of pay or premium pay as set out in the collective agreement while they are performing their health & safety duties under the *Code*?

(c) penalize the health & safety representatives by denying them the same [page41] rights under the collective agreement they would enjoy if they were flying instead of performing their health & safety duties?

(d) demand that individual health & safety representatives agree with those changes?

(e) if the Union representatives refuse to accept the changes, remove them from the Master Schedule?

(f) if the Union representatives refuse to accept the changes, refuse to flight release them to perform their health & safety duties under the *Code*?

(g) if the Union representatives do not agree to the changes, terminate their participation on the health & safety committees?

(h) if the Union representatives do not agree to the changes, select other persons to be the Union health & safety representatives?

(i) determine where the health & safety functions will be carried out?

(j) by limiting the number of health & safety representatives on flight release, determine what health and safety functions [page42] will be and will not performed; and

(k) determine when the health & safety functions will be performed?

25 These questions are based on certain assumptions and positions, but the answers to certain of them will assist in an understanding of the purposes, intent and the application in the circumstances of the relevant legislation. Accordingly, in addition to the issues of the approach to payment and the allocation of time and resources to health and safety issues, the present reasons will also consider certain of the questions set out above.

III - Analysis and Decision

26 It is perhaps most appropriate to first consider the central issue, that of the wages to be paid. The relevant provision in the statute, stated above, is clearly that of section 135.1(11), which requires that a health and safety committee member be compensated at the member's regular rate of pay or premium rate of pay as specified in the collective agreement, or if there is no collective agreement, in accordance with the employer's policy. The problem is that the situation is one which does not fall clearly within the provision because the rate of pay now provided for in the collective agreement is solely based on the hours flown, something [page43] that OSH representatives do not do while they are performing their OSH work. There is no real dispute that while the rate of pay for flying is a rate which uses only flying hours for the basis of pay, the rate is not really paid for the hours flown alone. The evidence indicated, without much dispute, that an average duty time to merit compensation for one hour of flying pay would range from 1.30 to 1.43 hours. Additionally, although in some cases time away from base (TAFB) - which in many cases is requested and required of flight attendants - could be equal to duty time, it would not ordinarily be less and could be a lot more. All flight attendants, under the collective agreement, while flying were guaranteed 12 days off, that is 12 periods of 24 hours in each block month, during which they could not be scheduled to fly. Additionally, the flight attendants were required to meet the requirements for crew rest imposed by regulations. Uniforms must be worn while flying. All of these factors are a part of the rate of pay of flight attendants, and it has been the accommodation reached and that reflected in the collective agreement that while flying, the rate of pay set out in the collective agreement for flight attendants at their level of seniority adequately compensates them, if that pay is based on flight time, or hours of flight. The flying rate is set in recognition of all the relevant factors to be compensated for. However, in [page44] consideration of all the evidence before the Board, it is a recognized fact that flight attendants are paid for more than their flying time.

27 Some flight attendants do not fly. These include those who are medically unfit and those who are on special assignment. With respect to those who are medically unfit, the Board heard evidence that this most commonly occurs due to pregnancy. Pregnant flight attendants, based on the evidence presented to the Board, generally receive a rate of pay equal to their previous year average and work 40 hours a week, in recognition that the ground duties which are involved are less strenuous and less demanding than flying duties. Flight attendants fly unless they are medically unfit, even if pregnant. The Board heard evidence that their flying duties cease and they are accommodated with ground [page45] duties when their medical advisors inform that they are no longer fit to fly.

28 Because pregnant flight attendants are not fit to fly, their situation cannot be directly compared to that of flight attendants on OSH duties, who are fit. The duties undertaken by those pregnant flight attendants are not as demanding as those of OSH representatives. As well, the Board heard evidence that although the collective agreement does not specifically provide for it, fit flight attendants do, from time to time, undertake ground assignments. Those that do receive a special assignment premium of $750.00 to $1000.00 a month in addition to their regular rate of pay. This amount can, depending upon the rate of pay of the flight attendants affected, be a significant percentage of their regular pay. However, since the collective agreement does not specify a special assignment rate of pay, it cannot be simply concluded that an OSH representative would be on special assignment and ought to receive such a premium rate of pay. As one of the employer's key witnesses, Mr. Patrick Botter, remarked, there is nothing in the collective agreement specifying the rate of pay of flight attendants on OSH duties.

[page46]

29 Mr. Botter testified at some length respecting the employer's intentions in introducing the September 29, 2003, policy on payment of wages. He recognized the intent of the statute that employees on OSH duties should not have their pay reduced because of that fact. Like other employer witnesses, however, he explained the employer's policy of the fall of 2003 as respecting the principle of the statute, by arguing that it was fair value for OSH work, if employees received compensation at a rate which would recognize two hours of OSH work as equivalent to the one hour of flying time standard. In other words, the rate for OSH duties should be one half of the rate for flying time as specified in the collective agreement in recognition of the other elements that comprised the duties of flight attendants and other relevant factors.

30 There was extensive evidence, on the other hand, by witnesses for CUPE, Air Canada who indicated and suggested that a figure nearer to the duty/flying time ratio of 1.4 to 1 or even 1.3 to 1 would be a fairer translation. It was testified as well that an hour of OSH work was equivalent to an hour of flying. It was argued that the above-mentioned Safety Officer's decision had established this. However, after carefully considering that decision, the Board is of [page47] the view that it did not directly make such a finding, and particularly that it did not make such a finding in the context of the currently applicable legislation and the evidence now before the Board.

31 Because of the conflict, the Board has carefully considered the practices of the parties over the years in respect of the compensation of flight attendants on OSH duties and the present wording of the statute itself, which makes the collective agreement, reasonably interpreted and applied as the key factor. The key, in the Board's view, is that it is intended by the statute, since the 2000 amendments to the *Code, Part II*, introducing section 135.1(11), that the collective agreement must govern. The key purpose of the new legislation, considering it in its entirety, is that employees on OSH duties must not thereby lose income. The Board in the present circumstances rejects the option that the policy of the employer should govern, because there is in fact a collective agreement, and if there is, the statute indicates that "A committee member shall be compensated by the employer for the functions described in paragraphs (10)(a) and (b), ... at the member's regular rate of pay or premium rate of pay, as specified in the collective agreement." In other words, so far as is possible, employees on OSH duties should continue to be paid regularly for their time worked, unless a premium rate applies, and then they [page48] should be paid at the premium rate. Most importantly, no OSH member should lose income, because of that aspect of their duties.

32 The problem, as indicated above, and the real challenge of the present circumstances is that while the requirement to compensate contemplated by the statute is clear, and the total amount of the payment required is clear, it cannot be less than ordinarily paid, there is no agreement in respect of what the collective agreement intends in respect of the hours to be worked, to merit the level of compensation which the provision guarantees must be paid. Lacking agreement and clear collective agreement direction upon this key item, the time to be worked must be set out at a reasonable level, which reflects the regular rate of pay or an applicable premium rate. All the factors expressed or implied in the collective agreement, the duty time to flying time ratio, the TAFB requirements, the complex bidding system that seeks a monthly average block bid of about 80 hours, the uniform requirements, the rest requirements and the guaranteed days off, which are negotiated components of flight attendant compensation set out in the collective agreement and must therefore be recognized in the figure for monthly hours to be worked, should be considered in setting the number of hours to be worked. It cannot be that flight attendants should [page49] not be paid for OSH hours, since they are not flying. Equally, it is unreasonable that those hours should be treated as hours flown. On the basis of the evidence, a figure must be set, that reasonably reflects the regular or premium rate of pay. Considering the evidence, this should be between the duty time to flying time ratio of 1.30 to 1.43 to 1, or about 110 hours, which is a clear collective agreement minimum, and the employer's suggested figure of 42.5 hours a week or 182.75 hours a month, given 4.3 weeks in a month. Neither the employer's figure, nor the union's suggested one hour of flying time to one hour of OSH work, however, is based upon a collective agreement standard or reference.

33 The standard for flight attendants who become pregnant and are accommodated does provide a measure of reference. They generally work 40 hours a week for their equivalent pay. Translated into a monthly work period, 40 hours a week at 4.3 weeks in a month, is 172 hours a month.

34 The traditional practices in the workplace, although they are not recognized in the collective agreement, may also be of some value in developing an appreciation of how the flying rate must be translated [page50] to a regular rate of pay. There is little doubt on the evidence before the Board that prior to the May/June 2003 period, when the contract for flight attendants was revised as a part of the CCAA process, an average 75-hour threshold of flying time each month at the rate of hourly compensation set out in the collective agreement for the seniority level of the flight attendant which defined their pay category, yielded their salary. The 75-hour threshold figure by changes to the agreement is now adjusted to 80 hours. Additionally, flight attendants could "top-up" by bidding for extra flying time. This is now allowed to the 100-hour maximum, and can go as high as 114-115 hours, since inbound flying time is not counted in establishing the limit, and a flight attendant whose outbound leg leaves them at 100 hours or under, can still top up over that number. The evidence respecting the situation of France Pelletier illustrates that a flight attendant with significant seniority can easily top up to 106 to 110 hours a month. Previously, the hours for OSH representatives shadow bidding would be compensated at the level of pay provided for an hour of flying, calculated one for one, and they would only work for the number of flying hours that they would have flown in the shadow block to earn their full, pre-OSH pay, before banking the additional hours, for later credit.

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35 While the employer in recent years has, during the payment of wages negotiation situation, not conceded the one for one payment, this, though disputed for some time as inappropriate, had been the practice in effect from the time of the 1992 Safety Officer's decision.

36 Another practice of relevance, which was testified before the Board, is that premium pay has been paid to flight attendants on special ground assignment. The evidence indicated such pay was substantial, in the region of $750.00 to $1000.00 a month, and could in some cases increase a flight attendant's ordinary compensation while flying by up to 20 to 25%. Taken together, the practices that were followed seem to indicate that a two for one allocation of hours as the employer's witnesses suggest, would not be a reasonable translation of OSH hours to flying hours, would be a significant increase from the practices regularly followed, even despite the testimony of employer witnesses that this was a recognized rule of thumb. Additionally, there was strongly conflicting evidence from the bargaining agent's witnesses suggesting that the rigours of OSH work were such that it would be equivalent, one for one, with flying.

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37 Another, not directly relevant aspect of the collective agreement provides a useful indicator of where the line ought to be drawn in setting the number of OSH hours to reasonably be worked to merit the hourly rate of flying set out in the collective agreement. All of the witnesses conceded that the collective agreement provides for a mandatory 12 guaranteed days off for flight attendants in the block month. Although the employer would dispute the relevance of the guarantee as a rest period, only for those flying it is a feature of the agreement. On the basis of the evidence, other than flight attendants, in an average 30-day month, most Air Canada employees will work roughly 21.5 days. In the same period, flight attendants work about 18 days. It is recognized that the length of the days worked can vary, but this figure taken alone suggests that the ratio of days worked for most Air Canada employees to days worked for flight attendants provides them with a measure of flexibility. Irrespective of the hours actually worked, flight attendants would appear to have made and maintained a provision in their collective agreement which allows them a measure of additional flexibility and provided for a measure of guaranteed personal time off.

[page53]

38 Given the lack of precision respecting the hours to be worked at OSH to be equivalent to "flying hours" in the collective agreement, any figure for a regular rate of pay for such duties would appear to be arbitrary. On balance, it appears that the hours worked by those on pregnancy accommodation would be the best starting point. Starting from a five day, forty-hour work week, and considering the relevant collective agreement provisions, including the guaranteed days off, the hours usually flown in a month of 80, the duty to flight time standards, past practices, the practice of the special assignment premium and all of the other factors identified above, it would appear that a reasonable rule of thumb for hours to be worked at OSH would be 80% of a work week of 40 hours. This work of four or five days would be equivalent to 80 hours of flying time a month. Hence, balancing 32 hours a week at 4.3 weeks in a month and rounding, the collective agreement should be viewed as requiring approximately 138 hours a month for 80 hours of flying pay as set out in the agreement. This, as it is suggested, would see OSH representatives being compensated at their regular rate of pay contemplated by the statute, despite the failure of the collective agreement to directly address the issue. No flight attendant working 138 hours should suffer a loss of pay from their regular flying pay standard, and should be [page54] compensated as if they had flown 80 hours.

39 Since the option of shadow bidding over 80 hours of flying time has been available to OSH representatives under the collective agreement as interpreted, this should be continued up to the current maximum in the agreement. Hence, to earn 80 hours of flying pay, OSH representatives would need to work 138 hours a month and this would be the standard working month. Time worked over that level should be compensated at an overtime rate of pay, in accordance with the collective agreement. Since it is recognized that some OSH representatives will inevitably work longer hours to perform all the required duties, hours in excess of 32 hours in any one week should be treated as overtime whether paid out immediately or banked and subsequently compensated. The Board did not have evidence respecting any premium rate of pay for such compensation, and is hesitant therefore to suggest any. It is recommended that the parties discuss the relevant premium rate in light of the identified factors.

[page55]

40 For certainty, OSH for representatives on part-time release should be compensated at a ratio of 80 to138 of the flying rate for all hours of OSH worked. For those full-time employees released to OSH duties, all OSH hours to their shadow bid level or yearly average limit should be paid at a ratio of 80 to138 of their flying rate, with the expected duty period for full compensation being four days a week. Overtime should be compensated at a premium rate to be agreed upon. Banking, which has been a long-standing practice, should continue where appropriate.

41 It is the Board's view that the payment of wages issue resolved as set out herein will, on all the evidence, compensate committee members at their regular rate as contemplated in the statute and in accordance with the collective agreement. This approach, it is suggested, will allow the retention of most of the other elements and features of the collective agreement, including recognition of employee seniority and block bidding. The flexibility of the guaranteed days off will be retained. It is recognized that this approach accepts that the flying rate of pay should not be directly [page56] translated into a rate of pay for OSH work and does not accept that OSH work is directly comparable to flying. Although some of the evidence presented by CUPE, Air Canada suggested that flying and OSH work were directly comparable, other evidence contradicted this, as did the employer's evidence. More important, the insistence that they are comparable ignores clear and cogent evidence that the flying rate is not intended to, and does not intend to compensate for all the work time that an employee works and ignores a significant component of work performed outside of flying time. Additionally, the evidence in the present matter on balance and the Board's experience over a number of years in respect of workplace disputes in the airline context indicates that the office and ground based OSH work, whether it relates to flying safety or other safety issues arising on the ground, remains essentially different from and is less physically demanding than the rigours and demands of flying. Hence, it is more reasonable to accept a modified ground comparator, in deciding what the regular rate of pay for such work should be.

42 There remains the second major issue of the hours to be worked and the number of employees to be flight released to perform OSH duties. On the evidence, the employer had sought at the [page57] time of its introduction of the September 29, 2003 policy to act unilaterally in that respect. However, the amended *Code, Part II* provisions set out above make it clear that the functions of both the PHSC and the WHSC are to be performed by persons selected and designated by the joint chairpersons. The sole exception to this, under section 135.1(5), is if no persons have been selected by the employees or trade union. Since they have, in the present case, been selected they must jointly participate in the designation of the committee members to perform the required functions. The statute does not contemplate that where there is an existing committee, this function will be performed unilaterally by the employer. It must therefore be jointly performed by the chairpersons.

43 Hence, it is apparent that Air Canada cannot, as it purported to do in the fall of 2003, unilaterally impose changes to the Health and Safety Committee, nor unilaterally assume any functions which the statute directs the committee to perform, now that the committees have been structured. The statute contemplates that the employer will recognize and work with the selected employees, and that there will be a sufficient number to reasonably perform the functions which the statute [page58] and chairpersons have identified. Needless to say, the employer cannot unilaterally remove selected union representatives in circumstances where it is acting unilaterally in the face of a disagreement with an established committee. The employer facing disagreement cannot substitute for the union designated members.

44 It remains to consider the alleged violations of sections 94(1) and 147 of the *Code*. As the present matters went to hearing, Air Canada agreed to continue the previous practices in respect of the PHSC and WHSC committees pending the resolution of the matters in issue by the Board. While illness on the part of the present panel and other factors have intervened to lengthen the period required to hear and decide the matters in issue, Air Canada has followed the previous practices and policies throughout this lengthy period, in accordance with its undertaking to the Board, and has not attempted to reassert its unilateral measures. Given this, and the findings and conclusions set out herein, there would be no labour relations purpose served by a present finding that Air Canada had been in violation of the relevant sections. However, to further consider the issues raised in paragraph 24 above, and to clarify such issues as remain, the failure of union representatives to agree to changes going forward, as in the past should not result in the imposition [page59] of any penalty by the employer, and the continued participation of the members appointed is a matter for the bargaining agent to determine.

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Case Cited:

Air Canada, Lester B. Pearson International Airport, and Canadian Union of Public Employees (CUPE) Division Health and Safety, Airline Division, Decision no. 92-005, April 2, 1992 (Labour Canada).

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