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Re Air Canada and ACPA (Thain)

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IN AN ARBITRATION

BETWEEN:

AIR CANADA PILOTS' ASSOCIATION (ACPA)

The Union

and

AIR CANADA

The Employer

RE: Captain Chris Thain (The Grievor), Discharge

BEFORE: Innis Christie, Arbitrator

HEARING DATES: September 18, 19 and 20, 2007

AT: Toronto, Ontario

FOR THE UNION: Sean McGee, counsel
Rainer Bauer, Master Executive Council, Grievance Chair
Paul Pellettier, ACPA – Director, Labour Relations

FOR THE EMPLOYER: Tim Lawson, counsel
Harlan Clarke, Manager, Labour Relations
Doug Bastow, Director of Flying Operations
Jay Musselman, Manager Flight Operations

DATE OF CONSENT AWARD: Agreed September 20, issued September 27, 2007

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Union Grievance dated October 18, 2006, on behalf of the Grievor, Captain Chris Thain, alleging that the Employer discharged the Grievor in violation of the Collective Agreement between the parties effective April 2, 2000 – July 1, 2009, which the parties agreed is the Collective Agreement applicable here.

At the outset of the first hearing in this matter the parties agreed that I am properly seized of it, that I should remain seized after the issue of any Award to deal with any matters arising from its application and that all time limits, either pre- or post-hearing, are waived.

The parties came before me and presented evidence in this arbitration. They requested that I issue a bottom-line decision, without reasons. In accordance with their request, I hold and order as follows:

CONSENT ORDER

- The Grievor, C. Thain, is reinstated to employment effective immediately and the suspension pending discharge is rescinded.
- The Grievor's status upon reinstatement is that of Leave of Absence Status.
- He will not accrue company service, pay, benefits, or any other collective agreement entitlements or other perquisites (i.e. travel privileges) during any Leave of Absence under this Order. However the Grievor will maintain his position on the Air Canada seniority list.

- The period of October 2005 to August 2006, when the Grievor was last held out of service, will not have an adverse effect on the Grievor's pay progression or future annual vacation entitlements as set out in article 18.02 of the Collective Agreement.
- The Grievor's pay for the period August 2006 to August 2007 will be adjusted accordingly and the difference shall be sent to the Grievor within a reasonable time.
- The Grievor will be returned to active service as a pilot when he:
 1. is issued valid security clearance and is in possession of the appropriate Restricted Area Pass. The Company shall make reasonable efforts in assisting the Grievor in obtaining this pass;
 2. removes, or at least modifies, his current bail conditions such as not to restrict him from, at minimum, flying all domestic routes within Canada. Air Canada will assist the Grievor by providing a letter to the Court advising that this is a requirement of employment;
 3. the Grievor must complete a satisfactory medical re-examination (within the meaning of article 20.05.01 of the Collective Agreement) by Air Canada Occupational Health Services. Should this not be the case, the Grievor will not be eligible for income benefits from the Group Disability Income Plan as outlined in article 26.03.02.06.
- The Grievor will also seek to provide assurance satisfactory to Air Canada that he is not prevented from entering the United States of America as a result of his criminal conviction.
- In the event that the Grievor satisfies the three (3) conditions precedent (1, 2, 3 above), his active status will remain in place for a trial period of twelve (12) months from the commencement of training. He will be paid under article 14 of the Collective Agreement during training.
- Upon satisfying the three (3) conditions, the Grievor shall be placed back on payroll. He shall be selected in the next available training course for the aircraft he selects.
- If, at the end of the trial period, the Grievor has not provided the immigration assurance, Air Canada has the unfettered discretion to place the Grievor on Leave of Absence Status as set out herein.

- Further, if during the twelve (12) month trial period, Air Canada determines that the costs attributed to and/or the operational difficulties posed by the Grievor's inability to perform full flying duties are unacceptable, Air Canada will have the right to end of the twelve (12) month trial period early and return the Grievor to Leave of Absence Status. ACPA will have the ability to forward the issue of early termination of the trial period to Arbitrator Christie, who remains seized. The parties agree to have the matter dealt with as expeditiously as possible, should the need arise, and that arbitrator Christie may convene a hearing by electronic means or issue a bottom-line decision in order to do so.
- At any time the Grievor is restricted to domestic flying within Canada (during the trial period and/or thereafter should an extension of the trial period be permitted by Air Canada) the Grievor will only be paid for the time he flies. He will not be eligible to receive the Minimum Monthly Guarantee (MMG) should he fly less than the hours as outlined in Article 10.
- If, at any time, the Grievor removes the admissibility restrictions on flights into the US and if paragraphs 1, 2 and 3 above have been satisfied, then for such time as the restrictions do not apply, the trial period and the provisions related to MMG shall not be in effect.
- Should the Grievor bid to fly to a destination outside Canada he must have the ability to legally enter that country.
- Following final disposition of the Grievor's criminal conviction, either by the Court of Appeal or by the Superior Court of Justice by way of a new trial, the Grievor will, if he has not already done so, provide Air Canada with assurance satisfactory to Air Canada that he is able to perform full flying duties, which will include elimination of all immigration restrictions for United States destinations to which Air Canada flies.
- This assurance is to be provided by the Grievor to Air Canada within twelve (12) months of the date of final disposition. For purposes of the Superior Court of Justice, the final disposition will be the completion of sentencing.

- If this assurance is not provided by the end of the twelve (12) month period, the Grievor shall resign his employment without any further rights or entitlements under the Collective Agreement including the grievance and arbitration procedure. In the event that the Grievor does not provide such resignation, Air Canada shall be entitled to terminate the Grievor's employment on the same basis set out above.
- Air Canada reserves the right to make a determination about the Grievor's continued employment in the event the Court of Appeal and/or the Superior Court of Justice, in the new trial, renders a decision less favourable to the Grievor than the April 19, 2007 judgment of the Superior Court of Justice. This right also applies to a determination respecting any period of incarceration the Grievor may receive, even if the period of incarceration is less than that imposed by the Superior Court of Justice on August 21, 2007.
- Air Canada shall pay to the Grievor, within a reasonable time, vacation leave he accumulated prior to August 30, 2007.
- The Grievor is not awarded any retroactivity of pay.
- Air Canada will have no obligation to provide the Grievor any ground/alternative non-flying duties, whether on a temporary or permanent basis, although Air Canada may assign such duties at its absolute discretion.
- Arbitrator Christie shall remain seized with respect to any aspect of this Order.
- This Order and its terms and conditions are not to set a precedent and shall be without prejudice to any other matter between the parties.

On September 20, 2007, this Consent Order was signed by Harlan Clarke, Manager Labour Relations, for the Employer, Rainer Bauer, Master Executive Council Grievance Chair, for the Union and Captain Chris Thain, the Grievor.

I so award and order.

Innis Christie, Arbitrator

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