

Give Air Canada pilots their due

John Mortimer, Financial Post

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It has the makings of a joke: What do you get when you combine an airline in trouble, two pilots' unions, an unfair first crack at settling seniority issues that favoured one side, a subsequent attempt that victimized the other and a Canada Industrial Relations Board (CIRB) ruling ignored by an arbitrator, but that the CIRB did nothing about?

There's no funny punchline. But the answer is: You get Air Canada. Eight years after its merger with Canadian Airlines, the pilots of the stronger airline -- Air Canada -- had their seniority arbitrarily downgraded. In some cases, pre-serving Air Canada pilots with actual equal seniority to the Canadian Airlines pilots were subjected to a five-year seniority disadvantage thanks to a later arbitration award.

Some history: Back in 2000, the federal government, unwilling to let a major airline crash, suspended the Competition Act and allowed Air Canada to take over Canadian. In reality, it was a government-forced shotgun marriage.

The CIRB set Oct. 17, 2000, as the official date when the two bargaining units, the Air Canada Pilot's Association (ACPA) and the Airline Pilots Association (ALPA), Canadian's pilots union, should merge seniority lists.

In anticipation, the unions agreed to have arbitrator, Morton Mitchnick, integrate seniority lists, subject to possible labour board reconsideration. Mitchnick's award clearly favoured former Air Canada pilots on the basis that they had a pre-merger economic advantage. In other words, because Air Canada rescued Canadian Airlines and its employees from wholesale pink slips.

In May, 2001, the CIRB ordered seniority be determined in accordance with the Mitchnick award. However, an intervention by the Canadian Airlines pilots resulted in the CIRB concluding Mitchnick's economic findings overvalued seniority of Air Canada pilots.

In 2003, the unions hired Brian Keller to apply CIRB directions in Decision 183, which ruled: "All bargaining unit members must anticipate that whatever occurs in the future will occur equally to all ... in accordance with common rules, and that unless absolutely necessary to produce a fair result, the applicable seniority lists should not discriminate against identifiable groups of employees based on their prior affiliation."

The CIRB also said the integration of the employee lists "should not be an occasion for one group of employees to improve their situation at the expense of another group." It acknowledged combining two lists would be difficult, but directed Keller not to discount seniority. It said the focus "should be to group pilots of a similar work situation together with those whose seniority allowed them to fly similar equipment with similar status at the relevant time being grouped together."

But Keller proceeded to discount seniority anyway. His 2003 arbitration award swung to the polar opposite of Mitchnick. All of a sudden, Air Canada pilots had their seniority discounted.

Pilots from each airline that were in similar work situations at the time of the merger were now separated by hundreds of seniority numbers. Keller had effectively demoted one-third of Air Canada pilots at the bottom of the overall seniority list. This contravention of Decision 183 did not set off alarm bells at the CIRB.

Why should we all care? The seniority issue, and the mishandling of it, has created deep divisions within the ACPA membership and contempt for labour law mechanisms. As hard-working Canadians, we all expect to be treated with fairness and respect by the government institutions that impact our lives. Today it is former Air Canada pilots. Tomorrow it could be you or I.

In a 2006 ruling, the CIRB refused to reopen the substance of the Keller award. But on Friday, an Air Canada Pilots Association-commissioned mediation panel headed by Paul Lordon, a former head of the CIRB and sole author of Decision 183, argues Keller's award should be changed to eliminate unfair gains which accrued to both sides.

It is a sensible recommendation, a justifiable slap in the face to the CIRB he once ran, and it leads to one further necessary action: Labour Minister Pierre Blackburn must now order mandatory mediation to rectify the substantial unfairness which has lasted for five years.

Hopefully arbitrators and labour boards will get their knuckles and reputations rapped for failing to do their jobs properly. For original Air Canada pilots with now-discounted seniority, this issue is no joke.

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