

**IN THE MATTER OF AN ARBITRATION
BETWEEN:**

AIR CANADA

(the “Company”)

-and-

**CANADIAN UNION OF PUBLIC EMPLOYEES,
AIR CANADA COMPONENT**

(the “Union”)

AND IN THE MATTER OF A GRIEVANCE REGARDING BREVETS

Louisa M. Davie - Sole Arbitrator

Appearances

For the Union: Megan Reid

For the Employer: Doug Gilbert

Award

On August 2, 2016 I issued an award on consent of the parties. The substance of that award confirmed Air Canada's policy, announced on July 7, 2016, that the wearing of a first name only and position title brevet was voluntary. Employees could choose whether to wear a first name only and position title brevet or could choose not to wear a brevet at all. The award notes that it is to remain in effect until the terms of the 2019 – 2022 collective agreement are finalized. I remained seized in the event there were any issues related to compliance with, or arising from, the implementation of the award.

By letter dated September 4, 2018 counsel for the Union requested that I convene a hearing as "it has come to the Union's attention that the Company has made brevets mandatory and has removed position titles contrary to your August 2, 2016 award."

A hearing with respect to this matter was held in Toronto on March 22, 2019. Prior to the hearing the parties filed various documents and witness statements upon which they relied in making their oral submissions. In rendering this award I have duly considered the written material filed and the oral submissions of counsel made at the hearing. I will address the 2 issues in the order raised in the correspondence. In so doing I note at the outset that, consistent with the parlance of the parties, the words "brevet" and "Wings" are used interchangeably to denote the same item.

Submissions

Has the Employer made brevets mandatory contrary to the award?

It is the Union's position that the Employer's In-Flight Service Style Standards Book (hereafter "Style Standards Book") and some issues of the "Move Me News" are

inappropriately and inaccurately worded with the result that they mislead and convey the message that wearing the brevet is mandatory.

Union counsel noted that unlike other sections of the Style Standards Book which clearly indicate the voluntary or optional nature of certain standards (for example the optional nature of wearing a belt or certain combinations of clothing) the portion of the Style Standards Book dealing with the wearing of brevets does not include any language to indicate it is optional. It was asserted that the absence of any language to indicate voluntariness, in combination with other provisions of the Style Standards Book which clearly indicate the voluntary or optional nature of other style matters, leaves the impression that wearing Wings is not optional or voluntary but mandatory.

In particular counsel submitted that the reference in the Style Standards Book that "your Wings must be visible at all times on the garment facing our customers" read in context of the remainder of the Style Standards Book indicates that wearing the brevet is mandatory. That language is misleading and violates the award.

Similar types of arguments were used with respect to the language employed in various Move Me News bulletins as counsel pointed to language which the Union maintained inaccurately and incorrectly suggests that wearing Wings is not optional.

The Union also maintained that the Employer's policy that brevets must be worn on the garment facing the customer, and its insistence that the brevet be worn on the garment under the outer jacket if the jacket is removed, violates the award. In order for the wearing of the brevet to be truly voluntary employees must be able to choose on which garment items they wish to wear the brevet. To comply with the award employees must be able to choose not to wear Wings at all, or wear Wings only on the jacket and not on

the garment item worn underneath the jacket. In order for wearing a brevet to be voluntary, as the award requires, employees must be permitted to change their mind. If they consent to wear the Wings they must also be allowed to withdraw that consent.

In response to these submissions counsel for the Employer argued that in order to determine whether or not the Employer had reverted to a policy that wearing a brevet was mandatory the entire Style Standards Book and Move Me News bulletins should be examined. It was counsel's position also that these documents should not be read in isolation, or that only portions of the documents were relevant. Employer counsel argued that properly read, and viewed in context, these documents did not indicate that wearing a brevet was mandatory.

It was asserted that there are number of sections in the Style Standards Book which specifically note the mandatory nature of some items. Thus, employees are directed that the red maple leaf Rondelle is a required uniform element which must be worn. Employees are directed that the jacket must be worn for takeoff, landing and emergency situations. In context therefore the lack of similar mandatory language in the section of the Style Standards Book dealing with the brevet indicates that wearing the brevet is voluntary. If the Employer had reverted to a policy that wearing the Wings was mandatory it would clearly have indicated that in the Style Standards Book in the same manner as it did in these other instances. The absence of any language which compels or directs employees to wear the brevet indicates the award has not been violated.

Similarly, Employer counsel reviewed a number of the Move Me News bulletins in which the voluntary nature of wearing the brevet is either explicitly or implicitly recognized by the language used. Counsel argued that the entirety of the Move Me News bulletins, together with the timing of their release, must be looked at. Viewed in context it was

evident that the Employer's communication have not indicated that wearing the brevet mandatory.

In terms of context the Employer submitted also that there is nothing to indicate that the Employer has revoked its July 6, 2016 policy. In addition, and as required by the award, a copy of my August 2, 2016 award was circulated to all bargaining unit members. Since the issuance of the award the Union itself has also issued two communiqués to its members which set out the terms of the award and that wearing Wings is voluntary. Finally counsel emphasized that no employee has been disciplined for not wearing a brevet. In the result it was the employer's assertion that the evidence, properly viewed in context, indicates that the Employer has not made brevets mandatory as alleged by the Union. The Employer has not violated the award.

In specific response to the Union's position that the Employer's policy that the Wings must be visible and worn on the garment facing the customer violates the award counsel for the Employer argued that this did not make wearing the Wings mandatory or otherwise detract from the voluntariness of an employee's decision about wearing the Wings. The policy applied only to employees who choose to wear the Wings. It does not compel employees to wear the brevet. Instead it simply tells those who choose to wear the Wings where and how the Wings are to be worn.

Counsel submitted that in my award dealing with lanyards (see award dated September 16, 2016 between these parties) I concluded that the Employer has the Management Right to develop a uniform policy. One aspect of such policy must include developing standards of how components of the uniform must be worn. Moreover, the August 2, 2016 award does not deal with how or where the brevet is to be worn. It continues to be a Management Right to develop standards with respect to those factors. Developing

standards with respect to how or where the brevet was to be worn did not violate the award.

Decision

Upon careful review of all of the documents and material before me, and having considered the submissions of counsel, I have determined that the Employer has not violated the award insofar as the Union alleges that the Employer has made brevets mandatory. The totality of the evidence before me indicates that the Employer continues to view the wearing of a brevet to be voluntary. Employees continue to have a choice whether or not to wear a brevet.

There is no doubt that in the various communications relied upon by the parties the Employer actively promotes the use of the brevet and gives detailed instructions on how it should be worn. In none of the documents however does the Employer say that the employee no longer has a choice and that the brevet must be worn. I do not accept the assertion of the Union that the language of the documents upon which it relies compels employees to wear brevets. The words being used may be somewhat inelegant at times but they are not words of compulsion or direction. In context of the July 7, 2016 policy which has never been revoked, the wide dissemination of my award (when it was released and more recently through the Union's own communications) and in light of the fact that no employee has been disciplined for not wearing the brevet, I accept the Employer's position that in the various documents before me the Employer has done no more than promote the wearing of the brevet. It has not made it mandatory.

As for the policy that brevets must be worn on customer facing garments I accept that this is no more than an instruction on how the Wings are to be worn by employees who choose to wear Wings. In my view this is a reasonable exercise of a Management Right.

The policy that the brevet must be worn on each customer facing garments does not detract from the choice which employees continue to have as to whether or not they want to wear the brevet.

In the Move Me News bulletin in which the policy is also referenced it is stated:

"Wings are to be worn on your customer facing garment at all times. You have been provided with two Wings so that one is to be worn on your jacket, and the other is worn on your vest/dress/sweater. It is not acceptable to our standards to wear Wings on one garment or the other. **If you choose to wear Wings – and we thank you for doing so, as it is core to our brand** – please do so on all customer facing garments for a consistent look and affect on those who interact with you.

If you prefer to wear just one Wings on the customer facing garment, please move the Wings to your other garment when you put on or take off the jacket for example, so that a customer to see your Wings at all times."

(emphasis added)

That is an instruction on how and where to wear the brevet. It is not a direction that compels employees to wear the brevet. The emphasized language denotes choice.

For all of these reasons I have concluded that the Union has not established that the Employer has made brevets mandatory and has thereby violated the award. This aspect of the Union's complaint is dismissed.

Has the Company removed position titles contrary to the award?

The Union submits that the award specifies that the Employer will maintain its policy which permits employees to choose whether or not to wear a brevet with a name "and position title." The July 7, 2016 policy refers to a "first name/title brevet". At the time of the policy and the award the brevet worn by employees contained in text format the employee's name and title. That is what the award referenced.

It is not disputed that the position title text has been removed from the brevet now being provided by the Employer. Instead the Employer has provided Wings with different colour accents to delineate between the Service Director or Flight Attendant. The Union argued that the removal of text denoting position title from the brevet violated the terms of the award.

The Employer maintained that the grievance and the award address the requirement that employees wear a name tag with their own name or an approved alternate name on it. The grievance, and consequently the award, were not concerned with the position title on a brevet. If the position title had been an issue in the grievance or the award a fourth option, namely to wear a brevet with only the position title visible would have been addressed in the grievance and the award (i.e. if displaying position title was important to the Union and central to the award the option of not wearing a brevet at all would not have been dealt with as not wearing a brevet would necessarily mean not displaying position title.)

Employer counsel submitted also that the award did not deal with how position title was to be displayed. The award did not compel the Employer to use only text to describe position title. The Employer was free to design the brevet and choose to have position title represented by colour rather than text. In this case the different colours effectively communicated the position title. Counsel argued that there were different means by which to denote position title. The Employer did not violate the award when it chose to represent position title via colour rather than in scripted text. Indeed, at the time of the July 7, 2016 policy and August 2, 2016 award, the parties were aware that the brevets then in use were temporary and that a newly designed brevet which would complement the newly designed uniforms would soon be rolled out.

In designing the new brevets the Employer determined to designate position title through use of colour rather than text or inscription. The Employer did so for sound reasons namely "to: preserve clean space around the name on the nameplate; reflect the growing international and multilingual profile of Air Canada's customers; and reflect Air Canada's move to more universal symbols rather than words were possible in brand applications."

Finally the Employer submitted that significant time, effort and money had been expended to come up with a design satisfactory to all and which addressed the concerns of bargaining unit members about size, shape and quality of the brevet. The new design was achieved with the assistance of cabin crew focus groups. It was displayed as early as late fall/winter 2017 and was on mannequins at the Cabin Crew Center at all four (4) bases. The brevets were presented to employees commencing in January 2018. In the circumstances it was too late for the Union to complain about the brevet in September 2018. Thus, if I determined that the design of the new brevets violated the award because it does not convey position title in text, no remedial relief should follow. The Union's delay in raising the issue was inconsistent with the agreement of the parties to deal in an expeditious fashion with any issues arising from the award and should not be countenanced.

Decision

I have determined that the Employer's failure to maintain the position title in text format violates the August 2, 2016 award.

The July 7, 2016 policy and the August 2, 2016 award are both clear. Each refers to a first name and "title" or "position title." Pursuant to the policy (and the award) employees do not have a choice whether or not they wish to display only their name or

only their title. They have a choice whether to display their name and position title or not display either. The brevet which existed when the July 7, 2016 policy was formulated and the consent award was issued contained both name and a text based position title. That policy has not been revoked and remains in effect. It specifically states that employees have a choice whether or not to wear "a first name/title brevet."

I accept that in some circumstances colour may be used to convey information, including one's status or rank and perhaps even a position. The difficulty in applying that to the present circumstances however is that the policy and award specifically refer to position title (and not merely position).

I accept Union counsel's submissions that a title is a descriptive designation or identification. The word "title" refers to an inscription or text which gives information. It is difficult to envision how a title can be represented by a colour. There is no accepted, universal colour which can denote a title, and no universal colour which denotes a Flight Attendant or Service Director. This fact is recognized by the Employer in its January 2018 Move Me News bulletin where it states:

"... and our brevets are Wings with red first name plates for Flight Attendants and black first name plates for Service Directors... It will no doubt take some time to get used to checking the Wings to determine who is the SD and who is the FA..."

(Mr. Anand's will say statement also appears to recognize that there is no accepted colour to convey a title as he acknowledges the new brevets "designate position through colour rather than title...")

In the result I have concluded that the Employer's failure to maintain position titles in text format violates its policy and the August 2, 2016 award.

Remedy

The Union has requested various remedies including an order that those employees who still have them be permitted to wear their previous brevets which specify first name and position title instead of the new Wings. As remedial relief the Union also seeks a declaration that the August 2, 2016 award has been violated, a direction to the Employer to review its policies to ensure compliance with the August 2, 2016 award, a posting in the workplace of this award, and a direction that the Employer provide employees with brevets with a text based position title within 60 days of this award.

The Employer opposes the granting of any remedial relief given the Union's significant delay in raising the issues addressed in this award. It is the Employer's position that the matters dealt with in this award are best left to the parties to deal with at the bargaining table as the parties negotiate the 2019 – 2022 collective agreement.

In all of the circumstances of this case, including the Union's delay, I consider it appropriate to limit the remedial relief to the following:

- (1) I declare that the removal of the text-based position title from the brevet violates the August 2, 2016 award.
- (2) Unless the parties agree otherwise in their negotiations for the 2019-2022 collective agreement, the Employer shall, on or before September 1, 2019, provide employees with a text-based position title brevet. The Employer can do so by (a) redesigning the current brevet to include a text-based position title, or (b) designing a new brevet which includes a text-based position title, or (c) designing a text-based position title brevet to be worn together with the first name brevet.

I will remain seized in the usual manner.

Dated at Mississauga this 3rd day of April, 2019

Louisa M. Davie