In the Matter of an Arbitration

BETWEEN:

AIR CANADA

(the "Company")

AND

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

(the "Union")

(CHQ-ROUGE-18-48: Unilateral Reduction of Benefits)

BEFORE: Eli A. Gedalof, Sole Arbitrator

HEARING HELD: February 26 2024

APPEARANCES

For the Company

Eric Beaulieu, Counsel, Air Canada

For the Union

Mathieu Bélanger, Counsel, Dewart Gleason LLP
Amani Rauff, Counsel, Dewart Gleason LLP
Brett Hughes, Counsel, Dewart Gleason LLP

AWARD

INTRODUCTION

1. This grievance, duly referred to me for arbitration, arises from the Company's decision in 2018 to change the benefit coverage available to cabin personnel at Rouge. In particular, the Company reduced coverage for a basket of paramedical benefits (physiotherapy, massage therapy and chiropractic), orthopaedic shoes, support hose and orthotics. At the same time, it created a

stand-alone speech therapist benefit outside of the basket of other paramedical benefits and increased the maximums for the psychologist and social worker benefit.

2. Article L55.12.02 reads:

> **Other Benefits** –The Company shall make the following plans available to Employees, the terms of which shall be in accordance with Company policy:
>
> o Health Care;
> o Dental Care;
> o Short and Long-Term Disability;
> o Basic Life and AD&D;
> o Optional Life and AD&D;
> o Dependent Life;
> o Employee Assistance Program.

3. The Union asserts that the Company's unilateral reduction of benefit levels breached the collective agreement. In the Union's submission, Article L55.12.02 provides employees with specific benefit plans, comprised of specific benefits and benefit levels, reflected in the 2013 benefit booklet. Any reduction in coverage for any benefit provided for by that plan must be bargained by the parties. Central to the Union's argument is Arbitrator Keller's award in *Air Canada and CUPE, Airline* Component, unreported, April 4, 2013(the "*Keller Award*"). The *Keller Award* arose from the inaugural interest arbitration between the parties for Rouge*.* In the Union's submission, in awarding the Company's benefit proposal in that case, Arbitrator Keller was clearly awarding the package of benefits that the Company had presented to him, which he compared favourably to the package of benefits available at other low-cost carriers ("LCCs"). He did not, in the Union's submission, award the Company an unfettered discretion to then unilaterally alter that plan, rendering those comparisons meaningless.

4. In the alternative, the Union argues that even if the Company does have the discretion to alter the plan, it has exercised that discretion unreasonably. In the Union's submissions, the benefits targeted for reduction are precisely those that flight attendants depend upon due to the nature of their work, and the Company has not substantiated any compelling need to reduce those benefits. Further, the Union objects that the Employer has refused to produce documents relevant to this issue. In the further alternative, the Union argues that the Company should be estopped from altering the benefit plan.

5. The Company, in response, argues that article L55.12.02 permits it to modify the terms of the Rouge Health Care Benefits Plan (the "Rouge Plan") as an exercise of management rights. It is not, it argues, required to negotiate

amendments with the Union. Further, it maintains that it exercised those rights in a reasonable manner, consistent with the acknowledged principles that guide its operations at Rouge. Faced with substantial premium increases largely attributable to certain benefits, the Company sought to maintain the best coverage possible while ensuring that premium increases did not dimmish its competitiveness in the LCC segment of the industry. It also increased coverage in areas that it identified as requiring improvement, and disputes that in the aggregate it even reduced benefit coverage. The Company also disputes that there is any basis upon which it ought to be estopped from reasonably exercising its management rights.

6. For the reasons that follow, I find that article L55.12.02 does not provide the Company with the discretion to unilaterally reduce benefit coverage. Read in isolation, the intended meaning of the provision is far from clear. A reference to enumerated and capitalized "plans", as opposed to the more generic "benefits", suggests the parties are referring to specific plans known to them, i.e., to a fixed set of benefits levels. Identifying the terms of those plans as according with "Company policy", however, suggests the terms are not fixed by the plans, but rather by policy which, in the usual course, the Company would have the discretion to change. But when article L55.12.02 is read together with the *Keller Award,* and having regard to the way the language of article L55.12.02 was presented to Arbitrator Keller, it becomes crystal clear that the "plans" referenced in article L55.21.02 are specific plans with fixed benefit levels. It also becomes crystal clear that there cannot have been any intention that the plans could then be unilaterally reduced by the Company. To read article L55.12.02 in the manner proposed by the Company conflicts with both Arbitrator Keller's reasons for awarding the provision, the way he described the proposal he was award, and the way the proposal was presented to him by the Company.

7. In light of my decision on the Union's primary argument, it is not necessary to decide the alleged unreasonable exercise of management rights or estoppel arguments, or the Union's objections arising from the Company's failure to disclose certain documents.

THE PARTIES' EVIDENCE

8. As in any matter of collective agreement interpretation, the starting point is the language of the provision in issue. Terms and conditions for Rouge are set out in Letter of Understanding 55: Air Canada Rouge. Again, article L55.12.02 provides for the benefits in issue as follows:

> **Other Benefits** –The Company shall make the following plans available to Employees, the terms of which shall be in accordance with Company policy:

- o Health Care;
- o Dental Care;
- o Short and Long-Term Disability;
- o Basic Life and AD&D;
- o Optional Life and AD&D;
- o Dependent Life;
- o Employee Assistance Program.

9. According to the Company, Article L55.12.02 requires only that the Company provide some form of Health Care plan, but not any particular Health Care plan. The specific terms of the Health Care plan are instead subject to the Company's management right to set policy. The Union, on the other hand, argues that where Article L55.12.02 provides for "the following plans" it is intended to refer to specific plans that were proposed by the Company at interest arbitration, and awarded by the interest arbitrator in the *Keller Award*. There is, it emphasises, no Company policy either then or now that would suggest otherwise.

10. In support of its position, the Union relies primarily on the will-say statement of Craig Smith, the Local 4098 President for Rouge. Mr. Smith summarizes the parties' bargaining history leading up to the *Keller Award*, the bulk of which evidence is reflected in the attached documentary record. Of particular significance to the Union's arguments are the Company's arbitration brief submitted to Arbitrator Keller, and the terms of his award.

11. Much of this history is reflected in the *Keller Award* which I will address in greater detail below. What the Union emphasises, is that throughout the entire process leading up to the award, the parties were ever and always discussing and comparing specific benefit plans. The Union sought to have awarded the Mainline benefit plan. The Company sought to have awarded the same plans provided to non-managerial employees at Air Canada Vacations. In particular, in its interest arbitration brief, the Company makes the following submission:

> 45. In order to be competitive in the low cost market, Air Canada is proposing a distinct benefit program for rouge's flight attendants. The Company proposes the implementation of the same benefits as those available to non-management employees of Air Canada Vacations. Air Canada's offer was described in the following terms in the language table to the Union during the November 2012 negotiations:
>
> > Other Benefits - The Company shall make the following plans available to Employees, the terms of which shall be in accordance with Company policy:

o Health Care;
o Dental Care
o Short and Long-Term Disability;
o Basic Life and AD&D;
o Optional Life and AD&D;
o Dependent Life;
o Employee Assistance Program.

46. The benefit plans offered by the Company are described in the report prepared by Towers Watson, entitled 'Benefits Data Source — Canada (BENVAL Report) — rouge Proposal" of January 22, 2013. As can be seen from the charts found at pages 5 to 9, the value of the benefits proposed by the Company for rouge's flight attendants ranks as follows when compared to the other domestically-registered low cost carriers, i.e. WestJet, Air Transat and Sunwing:

-1st in overall group benefits
-1st in respect of health benefits
-1st in respect of dental (excluding employee contributions)
-3rd in respect of disability benefits (excluding employee contributions)
-2nd in respect of death benefits (excluding employee contributions)

• Towers Watson — Summary of Provisions of January 18, 2013
• Towers Watson - Benefits Data Source — Canada (BENVAL Report)-
January 2013

47. For ease of reference, the following chart (found at page 5 of the report) demonstrates that the value of the overall proposed group benefits is above the group average and has the highest employer-provided value when compared with other domestically-registered low cost carriers:

[comparison charts omitted]

49. The charts found in the BENVAL report clearly demonstrate that the Company's proposal is reasonable and meets the criterion of competitiveness with other domestically-registered low cost carriers. The Company's benefit proposal provides superior value than the value of benefits offered by rouge's competing airlines.

50. On the basis of this analysis, it is clear that Air Canada's proposal meets the test of replication associated with determining a first collective agreement, as described below.

51. The Union should not expect to achieve benefits that would meet or exceed the norm found in mature collective agreements. The Union should

> also not expect to match the benefits of the 2011 Mainline Agreement which have been the subject of multiple rounds of bargaining over decades. The Company's proposal already provides a superior value of benefits to those offered by other domestic low cost carriers, and its associated costs are actually estimated to be the highest when compared to other domestically-registered low cost carriers.
>
> 52. The Union's proposal to obtain mainline benefits would not have been achieved in a first collective agreement, and therefore should be rejected.
>
> [emphasis added]

12. In the Union's submission, the Company clearly represented that it was offering specific benefit plans, and that this offer "was described in the following terms", i.e., the language that was ultimately incorporated into the Collective Agreement. Mr. Smith further confirmed that the parties have not subsequently negotiated any changes to Rouge benefits or Article L55.12.02. Neither has the Union ever been provided with an Employer policy related to Article L55.12.02.

13. The remainder of Mr. Smith's evidence is directed toward rates of benefit utilization and the impact of reduced coverage. As this evidence relates to arguments that I need not address in this award I will not summarize it here.

14. In support of its decision to alter the coverage provided for under the health care plan, the Company relies on the will-say of Amanda Corrie Marggi-Nolin. Ms. Marggi-Nolin is a third-party insurance specialist who provided advice to the Company. In her will-say, she explains that had the Company maintained benefits at the 2013 levels, it would have faced premium increases of close to 68%, or almost a million dollars a year, much of which would have been borne by the Company. She conducted an analysis of claims usage over the years 2015-18 and concluded that these increases could be reduced to just over 13% by reducing the maximum claim amount for paramedical services, moving from a 1 year to a 2 year period for orthopedic shoes, reducing compression hosiery from five pairs to two pairs per year and capping the cost of orthotic appliances at $250 or $350 per year for basic and extended coverage respectively. At the same time, the Company was able to increase coverage for psychologists and social workers from $750/$1000 to $1000/$1250 and to create a standalone benefit of $500/$750 for speech therapy, which was previously included in the paramedical basket. In the Company's submission, the prospect of such substantial premium increases, combined with the recognized need to maintain Rouge as a competitive LCC, amply justified its decision to implement the benefit changes.

ARGUMENT AND ANALYSIS

The Union Argument

15. The Union argues that the Company violated article L55.12.02 when it unilaterally reduced benefit coverage below the levels awarded in the *Keller Award*.

16. When the Company presented its benefit proposal to the interest arbitrator, it represented that it was proposing to provide specific benefit levels, which it listed, based on the policy in place at the time for Air Canada Vacations. It compared those proposed benefit levels favourably to its LCC competitors and relied on the total value of those benefits to employees. Arbitrator Keller adopted this approach of comparing the value of the benefits provided and, on this basis, concluded that "[t]he benefit package proposed by the Employer is awarded." No policy or materials of any kind suggesting that the Company would retain the ability to unilaterally reduce coverage, rendering meaningless the very basis upon which Arbitrator Keller made his award, was placed before the arbitrator, and nothing in his award suggests that he intended to award the Company such discretion. It is simply not possible, argues the Union, to read the *Keller Award* as doing anything other than awarding the specific benefit package that was placed before him by the Company.

17. In support of its argument the Union relies on *Greater Essex County District School Board and CUPE, Local 27 (MT),* 2013 CarswellOnt 1316 (Arb)(Knopf)*, Sattva Capital Corp. v. Creston Moly Corp*, 2014 SCC 53, *York University v. York University Faculty Association*, 2022 CanLII 57342 (ON LA)(Davie) and *Ontario Nurses Association v. Royal Victoria Regional Health Centre*, 2022 CanLII 15800 (ON LA)(Trachuck)("*Royal Victoria* for the general principles of collective agreement interpretation and the proposition that evidence of the circumstances surrounding a written contract—its "factual matrix"—is admissible for the purposes of interpreting that contract. In this case, it argues that such evidence is in any event necessary because the language of article L55.12.2 presents a patent or latent ambiguity that is resolved when one looks to the circumstances in which it was awarded.

18. The language refers to the "the following plans". In the Union's submission, the reference to a "plan", as distinct from a more generic reference to "benefits", suggests that the provision is referring to something specific. The specific nature of the plans referenced is reinforced, argues the Union, by the use of capital letters, is in "Health Care", "Dental Care", and so on. The provision, however, then fails to spell out what those plans are. The reference to "Company policy" provides no assistance in this regard, because

no such applicable policy exists. The answer, argues the Union, becomes clear when one looks to the way the proposal was presented to Arbitrator Keller, and the terms of his award.

19. In support of its reliance on the *Keller Award,* the Union emphasises that because the provision in issue was not the product of an agreement between the parties, but rather the award of an interest arbitrator, it is necessary to determine what the arbitrator intended in making that award. Rights arbitrators, who must ascertain that intention, are therefore entitled to look to and rely on the interest arbitrator's reasons, and the materials that were before him, in answering that question. In support of this argument, the Union cites *St. Joseph's Healthcare and OPSEU, Local 152, Re,* 2008 CarswellOnt 10004(Ont. Arb.)(Davie)*, Royal Victoria Hospital of Barrie v. Ontario Nurses' Association*, 2011 CanLII 26324(ON LA)(Stout), *Humber College Institute of Technology and Advanced Learning v Ontario Public Service Employees Union, Local 562*, 2022 CanLII 5871 (ON LA)(Parmar). In the Union's submission, Arbitrator Keller was clearly not choosing between replicating Mainline benefit levels, on the one hand, and providing discretion over benefit levels to the Employer, on the other; he was instead choosing between two packages of benefits and elected to award the package proposed by the Employer.

Company Argument

20. The Company maintains that article L55.12.02 allows it to unilaterally modify the terms of the benefit plans without any need to bargain such changes. In its submission, in so doing, it has followed its "policy", which is to maintain the best plans imposed by the Agreement while ensuring that premium increases do not undermine its competitiveness in the LCC segment. In the circumstances of this case, facing substantial premium increases were it to maintain 2013 benefit levels, the Company argues that it exercised its management rights in a reasonable manner. It notes that it did the same thing with the Air Canada Vacations plan.

21. In the Company's submission, the language of article L55.12.02 is clear and unambiguous. It requires the Company to offer "plans" covering each of the enumerated headings but does not dictate the terms of those plans. The Company is therefore free, it argues, to exercise its management rights to alter those terms.

22. Further, in the Company's submission, there is no basis for reading the reference to the Company's "policy" in article L55.12.02 as requiring a specific written policy. Where the parties require that a policy be published in writing, they say so, as in Article L28.01 which refers to "Company policy as published in ePub". A "policy", it argues, is defined as "a course or principle of action

adopted or proposed by an organization or individual". In the Company's submission, its policy is and always has been to ensure Rouge's viability and competitiveness. This policy is reflected in article L55.01.01, which identifies the purposes of the Rouge agreement, which include "the efficiency and economy of operation."

23. Addressing the 2013 interest arbitration and the *Keller Award,* the Company maintains that article L55.12.02 requires no interpretation. Nonetheless, citing *Royal Victoria,* it agrees that in determining the meaning of a provision awarded through arbitration, a rights arbitrator must determine the intent of the interest arbitrator. Citing *Humber College Institute of Technology and Advanced Learning v Ontario Public Service Employees Union, Local 562,* 2022 CanLII 5871 (ON LA)(Parmar) it also allows that a rights arbitrator can look to the materials submitted to the interest arbitrator, but must consider what weight ought to be accorded to them. In the Company's submission, Arbitrator Keller did not refer to the Towers Watson or Air Canada Vacations documents, and they ought therefore to be given no weight. Instead, the Company argues that Arbitrator Keller repeatedly recognized that the overarching fundamental objective in establishing terms and conditions for Rouge was that it remain competitive with other LCCs. To this end, argues the Company, "[h]e agreed to the wording proposed by the Company to allow Rouge to control its costs by usage of managerial rights when determining the terms of the Rouge benefit plans." Had Arbitrator Keller intended to freeze benefit entitlements at the 2013 levels, he could have awarded language such as that proposed by the Union. Since he did not, argues the Company, he must have intended that benefit levels be left to the Company's discretion.

Union Reply

24. In reply, the Union submits that the Company's argument ignores entirely the context that led to the *Keller Award*, including the Company's express representations to the arbitrator. Contrary to the Company's submissions, the representations relied upon by the Union were clearly known to the arbitrator, who a) accepted the Company' position that he ought to look at the value of the benefits being provided to employees; b) understood his task to be replicating benefits that were comparable to other LCCs; c) specifically confirmed that he had compared "the benefit package offered by rouge and the comparator low-cost carriers"; and awarded "the benefit package proposed by the Employer." The Company's interpretation would strip the article of any meaningful content, which was clearly not the interest arbitrator's intention in awarding a specific benefit package based on its value to employees compared to other LCCs.

Analysis

25. As noted above, the language of article L55.12.02, read in isolation, is unclear. One can easily imagine a multitude of ways of drafting that would capture either party's position much more clearly.

26. The Company argues that the intended meaning of the article is that so long as the Company provides some form of plan that can be described as, e.g., a "Health Care", or "Dental Care" plan, the terms of that plan are entirely within the Company's discretion. Yet it is difficult to reconcile that interpretation with the reference to a series of "plans" that will be made available to employees. As the Union argues, one would expect much clearer language to support the Company's proffered intention, such as "the Company will provide the following benefits, the terms of which shall be at its discretion".

27. On the plain language of article L55.12.02, however, the Union's interpretation is also problematic. The "plans" are referred to by their generic titles, albeit capitalized, and provide no additional information as the identity of those plans, as many collective agreements do. Further, as a general principle of interpretation, one ought to try to give plain meaning to all the words used by the parties to express their bargain. On the Union's interpretation, the phrase "the terms of which shall be in accordance with Company policy" serves no obvious purpose. I note, however, that in the absence of any Company policy that actually speaks to the terms of the benefit plan—and no such policy was presented in evidence—the purpose of this phrase is not obvious on the Company's interpretation either. The Company would read the phrase so broadly as to effectively mean that the Company has the unfettered management right to set the terms of the plans at its discretion. There are much clearer and more transparent ways of articulating that discretion than by reference to undefined "Company policy".

28. Fortunately, given these interpretive difficulties, it is neither necessary nor appropriate to read article L55.12.02 in isolation. As the Supreme Court of Canada held in *Sattva*, it is generally appropriate to look to evidence of the circumstances surrounding the creation of a contract. One does not do so to "overwhelm the words of that agreement", but rather to "deepen a decision-maker's understanding of the mutual and objective intention of the parties as expressed in the words of the contract" (para. 57). The scope and import of such evidence will vary from case to case but can include "absolutely anything which would have affected the way in which the language of the document would have been understood by a reasonable man" (para. 58).

29. As both parties agree, where a collective agreement provision has been awarded through interest arbitration, it is generally open to a rights arbitrator

to look to the interest arbitrator's award for guidance in interpreting that provision. To put it in the terms discussed in *Sattva*, it is the interest arbitration process that leads to the creation of the contract. In this context, the interest arbitrator's reasoning, having regard to the materials and representations before that arbitrator, are certainly things that would affect the way that a reasonable person would understand the provision that is ultimately awarded by that arbitrator. As Arbitrator Davie held in *St. Joseph's Health Care, London, v. O.P.S.E.U., Local 152*, [2008] O.L.A.A. 581, pre-*Sattva* and cited in *Royal Victoria* at para 46:

> In my view, where particular language has been awarded by an interest board of arbitration, a rights arbitrator can resort to the award of the interest board when it comes to the interpretation and application of provisions found to be ambiguous. The award, and to a lesser extent the briefs of the parties submitted to the interest arbitration board, are a permissible form of extrinsic evidence not unlike the evidence of negotiating history between parties who have freely negotiated their collective agreement."

30. As Arbitrator Parmar similarly stated in *Humber College*, post-*Sattva* (at para 14):

> [14] Where collective agreement language has been awarded pursuant to an interest arbitration award, the interpretive exercise moves from ascertaining the intention of the parties to ascertaining the intention of the interest arbitrator: see *Royal Victoria Hospital of Barrie and Ontario Nurses Association*, 2011 CanLii 26324, at para. 35. The principles of *Sattva* continue to apply. To that end, the question is whether the evidence the Union seeks to lead can assist in determining the meaning of the words of the collective agreement as intended by the arbitrator.

31. In the present case, as noted above, I find that when one considers article L55.12.02 in its proper factual context, its meaning becomes crystal clear. As the Union argues, there are numerous indications in the *Keller Award* that the arbitrator understood that he was awarding a specific package of benefits.

32. I note at the outset that there can be no doubt, as the Company argues, that in making his benefits award Arbitrator Keller intended to make an award that would permit Rouge to compete in the LCC segment. As described at p.3 of the award, this was the fundamental objective that guided the interest arbitration, as recognized in the parties' Memorandum of Agreement. The question for present purposes, though, is how he sought to achieve that objective in awarding benefits. The unfettered management right to set

benefits at any level the Company might choose is not the only or obvious answer.

33. As the Union observes, it was the Company that sought to have Arbitrator Keller award benefits based on the value of a particular slate of benefits. The arbitrator summarizes the Company position as follows (at p. 8):

> The Employer submits that benefits must be looked at not as what the cost is to the Employer, but what the value is to employees. On that basis, it submits that what is offered is superior in the aggregate to what is available to employees at other low-cost carriers.

34. In this summary, Arbitrator Keller clearly understood that the Company was offering a particular slate of benefits that could be compared to what is available to employees at other LCCs.

35. Throughout his award, Arbitrator Keller adopted an "outward" looking comparative approach, focussing "on what other low-cost carriers do and provide" (p. 9). His discussion of the benefit proposals follows this approach, and focusses entirely on the "package" of benefits proposed by each party, and how they fare in this comparison:

> The parties disagree strongly on how the issue benefits should be looked at. For the Employer, the proper approach is to compare benefits offered with benefits received at other low-cost carriers. For the Union, the proper approach is to examine the cost of benefits. Additionally, for reasons similar to those expressed above, it seeks benefits that are the same as those provided to flight attendants under the mainline collective agreement.
>
> My approach to this issue is no different to my approach to the earlier issues. It is a question of looking at the benefits received by flight attendants and other low-cost carriers and seeing how the proposal of either party stacks up. The purpose of the exercise is not to replicate the mainline collective agreement. It is, rather, to determine what is comparable and therefore should be replicated having regard to other low-cost carriers.
>
> I'll put it another way. Part of the reason any Employer provides health or other benefits is that it is something negotiated to assist employees. It is also, however, a means by which employees are attracted and retained. The focus of an employee who is comparing benefit packages to determine which is the more or most attractive is not the cost to the prospective employer. That is an irrelevant consideration to them. The focus of an individual employee is simply to compare benefit packages to see which one is, for them, the best or most attractive.

> In this exercise, I have done the same. I have compared the benefit package offered by rouge and the comparator low-cost carriers. As a result, while I found the report and conclusions of Mr. Harrington useful, I did not find them in any way conclusive, as the focus of the work, as requested by his client, was different than my focus.
>
> The benefit package proposed by the Employer is awarded.

36. It is difficult to imagine a clearer articulation of what the arbitrator understood he was awarding than the last sentence of his reasons: "the benefit package proposed by the Employer is awarded." It is equally difficult to reconcile that understanding with the interpretation of Article L55.12.02 now put forward by the Company.

37. The Company, in its brief, states the following:

> The intent of Arbitrator Keller, which transpire clearly from his award, was to enable the Company to compete in the low-cost carrier segment by providing a price advantage, while imposing an access to several benefit plans. He agreed to the wording proposed by the Company to allow Rouge to control its costs by usage of managerial rights when determining the terms of the Rouge benefit plans.

As is evident from Arbitrator Keller's reasons, the first sentence of this statement is accurate, and the second is not. Arbitrator Keller did not "agree to the wording proposed by the Company"; he does not mention it even once in his award. Neither does he express any intention, anywhere in his award, to allow Rouge to exercise its management rights to determine the terms of the benefit plans. Instead, he clearly and explicitly awards "the benefit package proposed by the Employer".

38. The Arbitrator's manifest understanding that what the Company was proposing, and what he was awarding, was a defined package of benefits, is easily understood when one considers the representations before him. As set out above in the excerpts from the Company's interest arbitration brief, the Company was proposing to implement the terms of an existing benefit plan, which terms were spelled out for the arbitrator and analysed in detail in comparison to the benefits offered at other LCCs. The Company's offer was, as it was represented to the arbitrator, for a "distinct benefit plan". It then represented that that same offer, i.e. the offer to provide a distinct benefit plan, "was described in the following terms in the language table to the Union during the November 2012 negotiations:", followed by the very language that is now found in the Collective Agreement. Nowhere in the materials I have been provided from the interest arbitration, or in the *Keller Award,* is there

any indication that the Company was proposing to retain the management right to then unilaterally reduce the benefit package it was proposing.

39. As the Union argues, to interpret article L55.12.02 in such a manner would render the basis upon which the benefit plans were proposed, and the arbitrator's reasons for awarding them, meaningless. The value of the benefits to employees, which in comparison to the value of benefits provided to employees at other LCCs was the reason they were awarded, could simply vaporize at the Employer's whim. Such an interpretation cannot be reconciled with the *Keller Award*.

40. For all these reasons, I find that upon reading article L55.12.02 within its proper factual matrix, it is intended to require the Employer to continue providing the package of benefits presented to the arbitrator at interest arbitration, until such time as the parties agree to alter those terms. That is what Arbitrator Keller awarded in 2013, and the parties have not agreed to alter those entitlements in the ensuing rounds of bargaining.

CONCLUSION

41. For all these reasons the grievance is allowed, and I declare that the Employer breached article L55.12.02 when it unilaterally altered the terms of the benefit plans to provide reduced coverage for several benefits.

42. I remit the issue of remedy to the parties and remain seized if they are unable to resolve the issue themselves.

Dated at Toronto, Ontario, this 25th day of June 2024.

"*Eli Gedalof*"

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Eli A. Gedalof
Sole Arbitrator