IN THE MATTER OF AN ARBITRATION

BETWEEN: NAV CANADA

CATCA UNIFOR LOCAL 5454

AND IN THE MATTER OF A GRIEVANCE RELATING TO UPGRADES OF FAMILIARIZATION FLIGHTS

ARBITRATOR: J.F.W. Weatherill

A hearing in this matter was held at Ottawa on April 16, 2015.

A. Rosner, for the union.

J. Emond, for the company.

AWARD

This grievance, dated January 15, 2015, relates to the company's refusal to upgrade an employee on a familiarization flight from Vancouver to Paris on November 17, 2014.

There is no dispute as to the facts. By article 29 of the collective agreement, certain employees (and the grievor is one such employee) are entitled to "familiarization flights" which may include (as in this case) a "unit visit", being "an on-site tour of an air traffic control facility during which the employee has the opportunity to observe all aspects of the operation". Article 29 includes, subject to the qualifications there set out (and which were met by the grievor), "Long Range Flights" to certain designated destinations, including Paris.

In accordance with the provisions of the collective agreement, arrangements were made for the employee in question to take a familiarization flight from his base in Vancouver to Paris and return. The itinerary which was arranged by the employer, and which was followed, was as follows:

> Nov. 17: depart Vancouver 9:10 AM; arrive Montreal 4:45 PM
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> Nov. 17: depart Montreal 8:00 PM; arrive Paris Nov. 18, 8:45 AM
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> Nov. 21: depart Paris 1:00 PM; arrive Montreal 2:30 PM
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> Nov 21: depart Montreal 5:10 PM; arrive Vancouver 7:35 PM.

For the trip from Vancouver to Paris, the scheduled flight times were four hours and thirty-five minutes for the first leg, from Vancouver to Montreal, and six hours and forty-five minutes for the second leg, from Montreal to Paris. Wait time in Montreal was three hours and fifteen minutes. Total flying time was eleven hours and twenty minutes. The total time for the trip from Vancouver to Paris was fourteen hours and thirty-five minutes.

For the return trip from Paris to Montreal and then to Vancouver, the total flying time was twelve hours and fifty-five minutes. The total time for the trip from Paris to Vancouver was fifteen hours and thirty-five minutes.

The employee's itinerary provided by the employer called for him to travel from Vancouver to Paris in economy class. For the return trip from Paris to Vancouver he was scheduled in business class. The grievance claims that the employee ought to have been scheduled in business class for the trip from Vancouver to Paris. The employee, it seems, paid personally for an upgrade to business class for the trip from Vancouver to Paris.

The grievance alleges a violation of article 2.2.10(d) of the Travel Program, which is included in the collective agreement by virtue of article 39 thereof. Article 2.2.10(d) provides as follows:

> *2.2.10 Authorizing of business/executive class air travel takes into consideration:*
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> - - -
>
> *(d) when the employer requires the employee to remain in continuous air travel in excess of twelve hours from scheduled departure to scheduled arrival, then all legs of the total flight shall be upgraded.*

In the grievance the union requests, by way of remedy, "a policy declaration to the effect that the reference to "continuous air travel" in article 2.2.10(d) necessarily includes layover time between connecting flights in situations such as the instant one". There is a further request that the employee in question be made whole.

In my view, a straightforward reading of article 2.2.10(a) of the Travel Program supports the grievor's claim: "continuous air travel" as it is used in that particular article, specifically refers to time "from scheduled departure to scheduled arrival", which I would consider to mean departure from the home base to arrival at the destination, and not to an arrival or arrivals at any intermediate points. This view is

decisively strengthened, in my view, by the provision that "all legs of the total flight" are to be upgraded. The "total flight" in the instant case had two legs, Vancouver-Montreal and Montreal-Paris. The "total flight" from scheduled departure in Vancouver to scheduled arrival in Paris exceeded twelve hours, and it follows, from article 2.2.10(d) that the grievor was entitled to travel in business class on that trip. Although not in actual flight throughout the trip, he was in "continuous air travel" throughout the trip, including stopover time in Montreal. The "total flight" (the clause does not say "the total of the flights", or "total actual flying time"), in the context of this clause, refers to the total trip, from arrival to departure. Again, in my view, the reference to "all legs" reinforces the conclusion that "continuous air travel" includes time necessarily spent between connecting flights. The mode of travel for this trip was travel by air, and the time spent on the trip was continuous.

It was argued for the employer that such an interpretation of the phrase "continuous air travel" would be inconsistent with other provisions of article 2.2.10. The entire article is as follows:

> *2.2.10 Authorizing of business/executive class air travel takes into consideration:*
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> *(a) when the employer requires the employee to travel on a continuous flight of seven or more hours with no stops between scheduled departure and scheduled arrival times, upgrading shall be authorized when requested by the employee (Familiarization flights and flights within North America are excluded);*
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> *(b) when the employer requires the employee to travel on a direct flight of seven or more hours, with one or more intermediate stops, where the employee is obliged to remain on board the same aircraft, upgrading shall be authorized when requested by the employee.*
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> *(c) if an employee changes planes during continuous travel of seven or more hours, thereby being provided an opportunity to walk around outside the confines of the plane, such flights shall not be upgraded unless continuous air travel exceeds 12 hours;*
>
> *(d) when the employer requires the employee to remain in continuous air travel in excess of 12 hours from scheduled departure to schedule arrival, then all legs of the total flight shall be upgraded;*
>
> *(e) when the employer does not require the employee to remain in continuous air travel in excess of 12 hours from scheduled departure to scheduled arrival, and there is an*

opportunity for an overnight stop which the employee declines, then upgrading shall not be provided; and

(f) there will be situations due to the configuration of the aircraft where no upgrade is possible, e.g., a single-class flight. In these situations where the non-stop flight is seven or more hours, or where the continuous air travel is in excess of 12 hours, the employer is expected to upgrade those flights that do provide this possibility, as deemed practical.

(g) For Familiarization flights and flights within North America, the minimum continuous travel time of seven hours as applied above shall instead be nine hours.

Reference should also be made to article 2.2.8, which is as follows:

2.2.8 Continuous travel time is considered to begin at the scheduled departure time of the first flight of a journey and end at the earlier of:

(a) arrival at the destination,

(b) the beginning of an overnight stop, or

(c) the scheduled arrival time of the first interconnecting flight(s) within the airline's minimum connecting time rules.

It was argued for the employer that since "continuous travel time" is defined in article 2.2.8, then "continuous air travel" (which is not defined) must mean something different. It should be said that article 2.2.8 is not without ambiguity, particularly with respect to the provision in subsection (c) which provides that continuous travel time may end at "the scheduled arrival time of the first inter-connecting flight(s)". Where that occurs, as on one interpretation it may, prior to arrival at the destination, then travel time wold end, which would be a contradiction, unless the reference is to the arrival time of the inter-connecting flight(s) at the destination. If indeed the reference is to arrival at destination, then in the present case the grievor would in any event be in "continuous travel time" at all material times, there being no suggestion that his interconnecting flight did not arrive on schedule. The reference to "first - - flight(s)" with the possibility of more than one flight being first, can only be said to be puzzling.

As to the phrases used in article 2.2.10, clause (a) deals with "a continuous flight - - with no stops", which is not this case, and which raises no question of inconsistency. Clause (b) deals with a "direct flight - - with one or more intermediate stops, where the employee is obliged to remain on board" which, again, is not this case and raises no question of inconsistency. Clause (e), I consider, is consistent with the interpretation I have given above to clause (d), on which the union relies. In providing that where the employer does *not* require the employee to remain in continuous air travel from scheduled departure to scheduled arrival, the employee having declined the opportunity for an available overnight stop, then no upgrade shall be provided, the implication is that the phrase "continuous air travel", at least as it is used in that clause, has the same "departure to arrival" meaning as I have found with respect to clause (d). Finally, it may be noted that clauses (f) and (g) are not material to the instant case.

It was the employer's contention that this case is governed by article 2.2.10(c), which provides that where, as here, an employee "changes planes during continuous travel", so that he or she may walk around outside the confines of the plane, then there shall be no upgrade unless "continuous air travel" exceeds 12 hours. The employer's interpretation is that "continuous air travel" refers to actual flying time, and that it is for that reason that the Paris-Vancouver trip was upgraded, whereas the Vancouver-Paris trip was not. The addition of the qualification of "air" travel to the phrase "continuous travel", it is argued, is significant and must be given effect.

This is an apparently forceful argument, since it relies on the principle that all the provisions of an agreement must, if possible, be given meaning. Both articles 2.2.10(c and 2.2.10(d) use the phrase "continuous air travel", although only clause (c) refers as well to "continuous travel". That phrase does not of course refer to a "continuous flight", since it refers to changing planes, although it may well have the same meaning as "continuous travel time" as defined in article 2.2.8. The addition of the word "air", however, does not necessarily imply actually being on a flight. Thus "air travel" does not exclusively refer to being in flight. It equally, or even more normally, means that the mode of travel is by air, rather than, say, by car, bus, train or ship. Airports are a necessary part of air travel, and where there are interconnecting flights, layovers between such flights are also part of that travel mode. The addition of the word "air" to the phrase "continuous travel" need not, then, necessarily imply

being in constant flight. It implies, as used in article 2.2.10(d), being in air travel mode throughout a trip, as the grievor was in this case.

It is recognized that under article 2.2.3 of the Travel Guidelines, as well as by article 29.04(b) of the collective agreement, the standard for air travel is economy class. An employee required or entitled to air travel, in order to be upgraded, must bring him or herself within one of the provisions of article 2.2.10 of the Travel Guidelines. In the instant case the grievor has, I find, for the reasons set out above, established that he was entitled to an upgrade on both legs of his trip from Vancouver to Paris, since he was in continuous air travel from scheduled departure to scheduled arrival, on a "total flight" (as that term is used in article 2.2.10 (c)) in excess of 12 hours.

For all of the foregoing reasons, the grievance is allowed. It is declared that the reference in article 2.2.10(d) of the Travel Guidelines to "continuous air travel" includes layover time between connecting flights in circumstances such as those of the instant case. It is also my award that the grievor be made whole. I remain seised of the matter to deal with any difficulty which may arise with respect to payment to the grievor, and to complete the award.

DATED AT OTTAWA, this 31st day of May, 2015,

J.F.W. Weatherill

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Arbitrator