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No. 65

PUBLIC SERVICE STAFF RELATIONS ACT
BEFORE THE PUBLIC SERVICE STAFF RELATIONS BOARD

BETWEEN:

TIMOTHY C. YATES and
MYRON FREDERICK H. TUDGE,

grievors,

AND:

TREASURY BOARD
(Department of Transport),

employer.

Before: Walter L. Nisbet, Q.C., Deputy Chairman.

For the Grievor: Catherine H. MacLean, counsel.

For the Employer: Robert Lee, counsel.

Heard at Ottawa, March 5, 1984.

COPY TUDGE + YATES + VANCOUVER
B.C.H + B.O.D
RETURN RAM
ART 28
CODE 402/82
DENIAL OF THE USE OF
ECONOMY AIRFARE

DECISION

1. The grievors are both Air Traffic Controllers whose job classifications are AI-4. They are both employed at the Vancouver Area Control Centre operated by the Department of Transport. They both function as data systems coordinators. They are included in the Air Traffic Control Group bargaining unit for which the Canadian Air Traffic Control Association is certified as the bargaining agent.

2. On January 4, 1983 both grievors were required by the employer to travel from their homes in Vancouver to the Transport Canada Training Institute in Cornwall, Ontario where, commencing in the fall of 1982, they were enrolled in a six-month training course. During this period they were entitled to return home to Vancouver from time to time at the employer's expense. They both grieve that, in respect of the trip they made in January 1983, they were denied the right to travel via a scheduled air carrier at the applicable economy fare or its equivalent, contrary to article 28.03(a) of the applicable collective agreement: code 402/82, expiry December 31, 1982. (Exhibit G-1). The parties are in agreement that the terms and conditions described in this collective agreement are those that apply to the circumstances giving rise to these grievances. The parties filed a somewhat truncated statement of facts concerning which they are in agreement. (Exhibit G-2). That statement establishes that in December 1982, the grievors returned to Vancouver from the training institute at Cornwall on an Air Canada flight at the regular economy fare that featured a level of in-flight service described by Air Canada as "Connoisseur".

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3. They were scheduled to return to Cornwall on January 10, 1983. For that return flight two Air Canada excursion fare tickets were purchased for them. The employer paid $348 less than the regular economy fare for each ticket but was required to make the necessary reservations and pay for the tickets 14 days in advance. A penalty becomes payable in the event of cancellation of these reservations. In these three ways the excursion fare tickets differed from the regular economy fare tickets.

4. Since late 1982 the Administrative Officer of the Department in Vancouver who is responsible for making travel arrangements for the staff of the Vancouver Area Control Centre had been obtaining for those employees excursion fare tickets rather than economy fare tickets wherever possible in accordance with a directive issued in May 1982 by the Deputy Administrator of the Canadian Air Administration, Department of Transport, to all Regional Administrators. The flight arrangements made for the grievors for their return to Cornwall on January 10, 1983 were the first involving them concerning which the Administrative Officer had sufficient advance notice to permit the purchase of excursion fare tickets rather than the regular economy fare tickets. Excursion fare tickets were purchased for the grievors on December 15, 1982. They did not discover that they had excursion fare tickets until early January following which they promptly filed their grievances.

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5. The grievors actually used the following flights for their trips from Vancouver to Cornwall and return in January 1983:

> Depart January 10, 1983 via AC 136, Vancouver 09:15, arrive January 10, 1983 via AC 136, Toronto, 16:25, depart January 10, 1983 via train, Toronto 17:00 arrive January 10, 1983 via train, Cornwall, 20:30; depart January 28, 1983 via AC 181, Montreal, 17:00, arrive, January 28, 1983 via AC 181, Vancouver, 20:30.

6. The directive issued in May 1982 by the Deputy Administrator to all Regional Administrators concerning the use of discounted fares for employees required to travel is dated May 26, 1982 and is marked as Exhibit G-3. By this memorandum all regions of the Canadian Air Administration were instructed to make the maximum use of discounted fares by making every effort to book flights at least three weeks before the departure date and by asking Central Travel Service for the details of any discounted fares that might apply to a particular trip.

7. Counsel for the employer, with the consent of counsel for the grievors, submitted in evidence a letter dated June 5, 1980 addressed to Directors of Personnel, Chiefs of Staff Relations, and National Joint Council

Departmental Liaison Officers by Mr. William McWhinney, Chairman, Official Side, National Joint Council, by which he advises that the council, on the previous day, had adopted the recommendations of its committee on government travel regarding revisions to the travel policy. As a consequence, the new Travel Policy formed part of all collective agreements as of that date concluded between the employer and a number of bargaining agents, including the Canadian Air Traffic Control Association. The new travel policy was issued by the employer as Chapter 370, Administrative Policy Manual, September 1980. (Exhibit E-3). Mr. Lee directed my attention to the following parts of the policy:

> .1.1, second paragraph, page 5. The purpose of the travel policy is to ensure consistent, prudent treatment of employees throughout the Public Service. The provisions contained in this policy are mandatory; once travel has been pre-authorized, the entitlements of the traveller shall be calculated accordingly.
>
> .2.2.1 The employer is responsible for selecting the mode and class of transportation to be used and the specific accommodation to be occupied in conjunction with all government business travel.
>
> .2.2.2 In choosing the mode and class of transportation and accommodation which are most economical and practical, the employer shall apply the criteria, standards and rates contained in this policy. (Emphasis added by Mr. Lee).

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> .3.3.2 Commercial air travel shall normally be by economy class. For program-related reasons, in a limited number of exceptional cases, such as for security, continual travel by first class may be necessary (e.g. diplomatic couriers abroad and R.C.M.P. officers when escorting prisoners). The Deputy Head may personally approve all such use. A record of these approvals shall be maintained for audit purposes. If, in the opinion of the employer, the use of first class air travel is unavoidable in other circumstances, such use shall be recorded by the department or agency concerned and reported on a quarterly basis to the Treasury Board (see article .12(a)).
>
> .3.2.3 Long journeys shall not be considered justification for authorizing a higher standard of air travel. The comfort of modern aircraft and cost considerations dictate that the most economical means available shall be used, e.g. economy class, excursion fares, group fares, or family plans.

8. The issue raised by these grievances is whether or not the excursion fare tickets provided for the grievors' trip on January 10, 1983 were the equivalent of the applicable economy fare then being charged by the scheduled air carrier concerned (Air Canada) within the meaning of clause 28.03(a) of the collective agreement. The grievors contend that they were not and that they were entitled to tickets at the full economy fare with which, on scheduled Air Canada flights, they would have been entitled to "Connoisseur Service" while in flight.

CASE FOR THE GRIEVORS

9. Mr. Jacques Levesque testified that he has been an Air Canada Commercial Sales Representative for the past ten months and that prior to that he was the Reservations Supervisor for Central Travel Service, the booking agency within Air Canada that makes travel arrangements for Federal Public Servants. Prior to this responsibility Mr. Levesque was the Customer's Service Duty Supervisor at the Ottawa International Airport. He has been employed by Air Canada since 1964.

10. Mr. Levesque said that at the beginning of 1983 Air Canada's fare structure consisted of two categories, first class and economy. He said that all discount fares are derived from them. He said commencing approximately five years ago Air Canada adopted its "Connoisseur Service" obtainable at the full economy fare. Discounted fares are derived from it and carry various trade names such as family fare, senior citizen, youth discount and leisure discount. These carry various designations and differ seasonally, e.g., sky-saver, super sky-saver, deep discount, and weekend. Mr. Levesque said that the excursion fare tickets obtained for the grievors carry the market names of Sky-saver or Super Sky-saver. He said some of the features or amenities available under a full fare economy (Connoisseur) ticket that are not available under an excursion fare ticket include advance selection of seats up to 21 days prior to the date of flight, seat location in the front of the economy section of the aircraft cabin considered to be more comfortable in jet

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aircraft, the likelihood that a seat will be vacant between passengers, a choice of at least two entrées together with free alcoholic beverages, freedom to change flight reservations without payment of penalties and the ability to obtain a refund of the fare if the economy fare ticket is not used. In some cases, excursion fares are not refundable while under others a transfer to a full economy fare ticket may be made using the value of the excursion fare ticket. Finally, there is no charge for in-flight entertainment on the longer flights on which movies are shown.

11. Mr. Levesque said that Air Canada must remain competitive and to do so must match the fares of other air carriers.

12. Mr. Levesque said that in 1982 a new contract was concluded between Air Canada and Central Travel Service under the terms of which flight reservations for Public Servants may be made at first class fares, full economy fares and discounted fares.

13. Under cross-examination Mr. Levesque said that January is a critical month of the year and that seat distribution is determined by a computer programmed with seat distribution information extending over the previous three years. He said it would be likely that 60 seats would be designated for passengers entitled to "Connoisseur Service".

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14. He said that as excursion fare passengers, the grievors were not entitled to a choice of entreé for the meals they consumed while in flight and would also receive a lower standard of meal.

15. Under re-examination Mr. Levesque said that the cost of tickets issued to the grievors was determined by applying a percentage to the full economy fare.

16. Counsel for the grievors announced that she wished to call Mr. William Robertson as her next witness for the purpose of establishing the existance of a latent ambiguity in the wording of clause 28.03(a) of the collective agreement and to introduce extrinsic evidence to show that the words "or its equivalent" in the clause were treated by the parties as a term of art. She contended that where the language of the agreement is unequivocal but its application to the facts is uncertain or difficult, a latent ambiguity is present and extrinsic evidence may be adduced to disclose the latent ambiguity in either the language of the agreement or in its application to the facts, and also to resolve it. She cited Brown and Beatty, Canadian Labour Arbitration, at pages 127 and 128; Second Edition at pages 153 and 154, and the case of Leitch Goldmines Limited v. Texas Gulf Sulphur Company (1968), 3 D.L.R. (3d) 161 (H.C.J.).

17. Counsel for the employer objected to my hearing the proposed extrinsic evidence contending that I must decide whether or not any ambiguity existed in the wording

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of the clause before I could properly hear such evidence. He argued that there are many "equivalents" to economy fare, pointing out that the French text of the collective agreement states:

> ----de vols régulaires en classe économique ou son équivalent. (Emphasis added).

15. Mr. Lee argued that there is an economy class with many equivalents. The level of service must be considered but this does not alter the fact that an excursion fare passenger is in the same cabin getting "equivalent service".

16. Counsel for the grievors argued that Mr. Levesque's evidence makes it clear that discounted fares are not the equivalent of "economy fare". She submitted that during the course of collective bargaining the parties addressed what they meant by "equivalent" in the context of the agreement.

17. Counsel for the grievors submitted that I need not determine the existence of a latent ambiguity in the wording of clause 28.03(a) before hearing the extrinsic evidence. She argued I ought to hear that evidence and reserve my decision on the question of whether or not a latent ambiguity existed.

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18. Counsel for the employer countered by submitting that counsel for the grievors was asking me to alter the collective agreement. He cited the case of Trollope & Colls Ltd. v. North West Metropolitan Regional Hospital Board (1973) 2 All ER, 26 at 268, where a test is set out to determine the meaning of a document not expressed by the parties to it.

19. I decided to adopt the approach advocated by counsel for the grievors. Mr. Robertson's evidence was heard, and my decision on it reserved.

20. Mr. William Robertson testified that he commenced employment as Manager, Employee Relations, Canada Post Corporation on July 4, 1983. He said that from July 1973 to July 1975 he was Ontario Regional Director of the Canadian Air Traffic Control Association; from July 1975 to July 1979 he was National Vice-President of the Association and from July 1979 to July 1983 he was the National President.

21. Mr. Robertson said he had reviewed the collective agreements entered into between the employer and the Canadian Air Traffic Control Association during the period he occupied the previously described positions in the association. He said clause 28.03 of the collective agreement first became the subject of collective bargaining in 1977 and was first included in the collective agreement signed on January 1, 1978: Code 402/78. (Exhibit G-4). When that agreement was negotiated Mr. Robertson said he was the Chief Negotiator for the Association and that Messrs. Peter Dawson, Gordon Wilkins and Ron Moores were the negotiators for the employer. He identified

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notes that he had instructed Mr. A.J. Grant to take at the collective bargaining meeting on November 2, 1977. (Exhibit G-5). He said that in these notes clause 28.03 is referred to as clause 28.02. He said the notes were taken as each of the individuals identified in them spoke. The practice was to keep an accurate record of the time and date and those in attendance at particular collective bargaining meetings. He said that the letter "E" indicates the employer and small "e" is the employee. "D" indicates that Mr. Dawson spoke as noted and "R" indicates that Mr. Robertson spoke as noted. The clause that became 28.03(a) was first proposed by the representatives of the Canadian Air Traffic Control Association. At the time of these negotiations, economy fare meant full fare. However it was known that the air carriers were beginning to use such descriptive terms as "Connoisseur Service" (Air Canada) and "Empress Class" (CP Air) and the bargaining parties knew that they could not detail all the different types of economy fares that were becoming available and decided to use the expression "or its equivalent" in the collective agreement. Exhibit G-5 contains the only notes made of the discussions that occurred during collective bargaining concerning this provision.

25. Mr. Robertson said that agreements reached by the national joint council were not initially binding on the parties who were represented on the council. However, after December 6, 1978 a new procedure was adopted under the terms of which agreements reached in the National Joint Council could be included in collective agreements with

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provision for opting out by any bargaining agent not wishing to have the particular National Joint Council agreement become binding on it or the employees it represented. The new procedure also provided that where any conflict arose between an existing collective agreement and the agreement reached in the National Joint Council the provisions of the existing collective agreement were to prevail. Mr. Robertson referred to the National Joint Council constitution and bylaws, paragraph 5.4.3.6. (Exhibit G-6).

26. Mr. Robertson said that two years after the procedure described in the preceding paragraph was adopted the collective agreement incorporating article 28 was signed. At this time the new travel policy announced in the memorandum dated June 5, 1980 (Exhibit E-1) was under development. He said paragraph 5.4.3.6 of the National Joint Council constitution and bylaws had the effect that where the travel provisions of a collective agreement were better than those contained in the new travel policy, the former were to prevail. He said that before the Canadian Air Traffic Control Association agreed to participate in the National Joint Council discussions leading to the adoption of paragraph 5.4.3.6, discussions occurred in 1979-80 with Messrs. McWhinney and Garry Myers, then Co-chairman of the National Joint Council. As a result of those discussions, it was confirmed that if a collective agreement contained a travel provision better than those contained in the new travel policy (Exhibit E-1) the former would prevail.

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CASE FOR THE EMPLOYER

24. Mr. George Flosse testified that he is a senior officer in the Tariffs and Services Division of the Canadian Transport Commission where he has been employed for the past nine months. His duties include evaluating the tariffs and conditions filed with the Transport Commission by Air Canada. Mr. Flosse said that prior to his commencing employment with the Commission he had been involved with airline marketing and sales for 18 years.

25. Mr. Flosse identified a copy of C.T.C. (A) Number 241 containing a definition of Air Canada's first class and economy class service as it existed in 1983. (Exhibit E-2). He said Air Canada had two classes of service, first and economy. He said "economy" and all its subdivisions are economy fares because all passengers paying that fare sit in the economy portion of the aircraft cabin. He said Air Canada is legally bound by this tariff and its conditions as described in Exhibit E-2.

26. Under cross examination, Mr. Flosse said that "family plan" is an economy fare but may also be a discounted first class fare.

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30. Ms. Zenovia Pankiw testified that she is the Senior Projects Officer, Administrative Policy Branch, Treasury Board, in which position she has been responsible since 1976 for the employer's travel policy and its revisions. She said that nowhere in the new travel policy announced in Exhibit E-3 is there any provision entitling a Public Servant to travel by air economy class. She said long journeys do not justify a higher standard of travel.

31. Under cross-examination Ms. Pankiw said that her knowledge concerning travel for public servants is confined to the travel policies established by the employer.

SUBMISSIONS FOR THE GRIEVORS

32. Ms. MacLean submitted that the question I have to determine is the meaning of clause 28.03(a) of the collective agreement. She submitted that although the employer has the right to determine the method of travel, once that method is determined to be by air carrier clause 28.03(a) comes into operation and the words "economy fare" in the clause do not refer to a discounted fare.

33. Ms. MacLean submitted that the employer suggests economy fare is the same as economy class and that economy fare applies to every seat in the aircraft except those in the first class section of the cabin. She submitted that this is an improper interpretation and contrary to the context of clause 28.03(a) and does not

take into account travel policy and the extrinsic evidence. She said the expression "economy fare" also appears in clause 28.03(f) and pointed out that the French text of the agreement (page 60 thereof) uses the word "tariff" which does not appear in clause 28.03(a). She argued that this makes it clear that the intention of the parties was to provide air travel at the level of amenities provided by the full economy fare.

34. Ms. MacLean submitted that a distinction must be drawn between "economy fares" and "excursion fares". She referred to Exhibit E-2 where Air Canada breaks down its fares into two types. She submitted that the parties to the collective agreement did not know about this information filed by Air Canada at the time of the negotiations in 1977. She pointed out that economy air travel differed from that provided under excursion fares before 1977 insofar as the Public Service is concerned. She said a significant change was introduced in April 1977 that clearly set up a distinction between travel under economy and excursion fares. She referred to paragraph .3.2.3 at page 13 of the travel directive (Exhibit E-3) where it is made clear that "economy fare" means full fare.

35. Ms. MacLean submitted that in November 1977 the predecessor of article 28 of the collective agreement was negotiated by the bargaining parties. She argued that provision makes it clear that "economy fare" is something different than a discounted fare. She referred to the evidence of Mr. Robertson and argued that it shows that

the bargaining agent's proposal contemplated travel at full economy fare or the equivalent of full economy fare. She said at the time the proposal was made air carriers were beginning to use descriptive expressions such as "Connoisseur Service" which described the service provided under full economy fare.

36. Ms. MacLean argued that even if I disregard the extrinsic evidence it is clear that full economy fare cannot refer to discounted fares. The word "equivalent" means of equal value or worth. Discounted fares do not provide service that is equal in value to that provided by full economy fares. Under the latter, flexibility is retained to alter the date and time of flight and to obtain a full refund in the event the flight is not taken. These changes may be made at the last minute without incurring any penalty. Ms. MacLean said that where last minute changes occur the employee cannot expect the employer to pay any applicable penalty if the change is made for reasons personal to the employee. She argued that there were clearly fewer amenities extended to an employee travelling on a discounted fare, e.g., less favourable location in the cabin of the aircraft, no advance seat selection, the likelihood of cramped seating because of the lack of vacant seats between passengers, no free entertainment while in flight, and a lack of choice and lower standard of meals. Ms. MacLean argued that the plain meaning of "equivalent" cannot be that discounted fares provide service that is equivalent to that provided by a full economy fare and that I must, therefore, hold that clause 28.03(a) entitles

employees to travel at a full economy fare and not at a discounted fare.

SUBMISSIONS FOR THE EMPLOYER

37. Mr. Lee submitted that three possible definitions of the expression "economy fare" were available. The first is indicated by the French text of clause 28.03(a) where the words "classe economique" are used indicating a fare related to economy class. This interpretation is strengthened by the wording of clause 28.03(f). Mr. Lee referred to the meaning given the word "economy" by the sixth edition of the Concise Oxford Dictionary at page 328:

> 2. Careful use of resources, frugality; instance of this; cheapest class of air travel;

38. Mr. Lee suggested a second definition of "economy fare" is provided by the airline industry, a description of which was given in the testimony of Messrs. Levesque and Flosse. As Mr. Levesque was called to testify on behalf of the grievors, his evidence should be discounted because of his consequent interest in the successful outcome of the grievances and I should give preference to the evidence of Mr. Flosse. He referred me to Exhibit E-2, containing a description of the service provided by Air Canada to persons paying economy class fares. He argued that various fares are paid for a seat in the economy class portion of the aircraft's cabin and that the only difference between full fares and excursion fares is in the method of making reservations by the employer.

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The employer assumes the risk of having less flexibility in making last-minute changes in respect of which a penalty may become payable. He referred to the second paragraph of the memorandum forwarded by the Deputy Administrator, Air, to Regional Directors where the restrictions applicable to discounted fares are mentioned. (Exhibit G-3). Mr. Lee argued that this document gives a clear indication that the employer is attempting to use public funds as economically as possible within the confines of the collective agreement.

39. Mr. Lee suggested that Mr. Robertson was wrong in stating that "Connoisseur Service" was first mentioned by Air Canada five years ago. He said Mr. Robertson said he had referred to collective bargaining in November 1977 at which time "Connoisseur Service" had not been mentioned.

40. Mr. Lee submitted that in considering "economy class" as used by the airline industry, the expression must be taken to mean the right of the passenger to occupy the economy class portion of the aircraft cabin, access to which may be obtained by the payment of many different fares.

41. The third definition of the expression "economy fare" suggested by Mr. Lee may be derived from reading the collective agreement and the "Travel Policy" together. The collective agreement must be interpreted as incorporating the travel policy. Clause 28.01 of the collective agreement gives the employer the right to choose the method of travel. However, an employee may obtain the employer's

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approval for some other preferred method of travel provided its use does not increase the cost. Clause 28.03 gives an employee the right to choose travel by air at economy fare or its equivalent or travel by car, subject to clause 28.03(f). If air travel is chosen, the employer may make the necessary reservation three months in advance in which event an excursion fare would be payable. If reservations are made at the last minute, full economy fare would be payable. If the employee chose to use his car as the method of travel the amount of reimbursement to him for its use would vary depending on the circumstances and timing of the trip. Insofar as the employer loses the right to make last-minute changes in flight time and date, it is willing to assume the risk of a possible adverse result. Mr. Lee submitted that the loss of the right to make advance seat selection and the loss of other in-flight amenities is of no consequence.

42. Mr. Lee submitted that normally, the grievors travelled at full economy fare. Their trip in January, 1983 was the first time sufficient advance notice of their travel permitted the use of excursion fares.

43. Mr. Lee pointed out that the provisions of clause 28.03(a) were first included in the agreement negotiated in 1977. The current travel directive became effective in 1980 and the current collective agreement (Exhibit G-1) incorporates by clause 28.05 that travel directive. Mr. Lee submitted that the provisions of the travel directive (Exhibit E-3) are the same as those concerning travel contained in the current collective agreement

under which the employer chooses the mode of travel. Mr. Lee submitted that there is no contradiction between the travel directive and the collective agreement. Both grievors had Y-88 tickets, the designation given by Air Canada to economy tickets.

REPLY FOR THE GRIEVORS

44. Ms. MacLean submitted that the collective agreement is not the same as the travel directive. She referred to clause 28.05, pointing out that this clause appears in identical form in both the collective agreement negotiated in 1977 (Exhibit G-4) and in the current agreement (Exhibit G-1). The clause provides:

> 28.05 Except as may be modified in this agreement, employees will be reimbursed for all travel expenses in accordance with the current Treasury Board travel directive.

Ms. MacLean submitted that those provisions of the collective agreement that differ from the travel directive are to prevail and that to this extent, the provisions of the travel directive are not mandatory.

45. Ms. MacLean referred to paragraph .2.2.1 on page 10 of the travel directive and to clause 28.01 of the collective agreement under both of which the employer chooses the method of travel. Under the collective agreement the employee selects his accommodation and to this extent the agreement differs from paragraph .3.2.2

at page 12 of the travel directive. There is no provision in the collective agreement for first class travel. Ms. MacLean pointed out that clause 28.03(f) of the collective agreement differs from paragraph .4.4.2 at page 16 of the travel directive. The collective agreement refers to economy fare without the flexibility contemplated by the travel directive.

46. Ms. MacLean referred to Mr. Lee's submission that there were three possible definitions that might be assigned to the word "economy". Ms. MacLean submitted that the dictionary definition of the word was not applicable because it is used in the collective agreement as an adjective and not a noun. She submitted that the industry definition described by Mr. Flosse must be rejected in favour of the meaning described by Mr. Levesque whose evidence, argued Ms. MacLean, is more helpful than that of Mr. Flosse in determining the meaning to be given to the word in the context in which it appears in the collective agreement.

47. Ms. MacLean referred to Mr. Lee's submission that "Connoisseur Service" was not heard of at the time the provisions of clause 28.03(a) of the current agreement were first negotiated in 1977. Ms. MacLean submitted that in making that statement Mr. Lee was giving evidence and that Mr. Levesque's evidence as to the introduction of the term "Connoisseur Service" is to be preferred.

48. Ms. MacLean argued that it was significant that the grievors always travelled at economy full fare prior to January 1983.

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49. Ms. MacLean submitted that Exhibit G-3, the memorandum of May 1982 addressed by the Deputy Administrator, Air, to all Regional Administrators in the Department of Transport instructing them to ensure that advantage is taken to the greatest extent possible of discount fares, provides the basis for my making a prospective declaration as to the propriety of the employer's intention in the future to continue the use of discount fares.

REASONS FOR DECISION

50. I must first deal with the question as to whether or not the extrinsic evidence in the form of the testimony of Mr. William Robertson may properly be admitted and used as an aid in interpreting clause 28.03(a) of the collective agreement. The resolution of that question depends on the existence of a latent ambiguity in the clause. Although the language of the clause is apparently unequivocal, its application to the facts of these grievances is, in my view, uncertain and it gives rise to a latent ambiguity. As is made clear in the judgment of the Ontario Court of Appeal in the case of Leitch Goldmines Limited v. Texas Gulf Sulpher Company, supra, extrinsic evidence may be admitted to disclose a latent ambiguity in either the language of the instrument or in its application to the facts, and also to resolve it. Thus, evidence of relevant surrounding circumstances can be accepted to ascertain the meaning of the document and may clarify the meaning by indirectly disclosing the intention of the parties. In that case, the Court also stated that, if the surrounding circumstances do not explain the latent

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ambiguity, an equivocation is said to be established, in which event, in addition to evidence of circumstances, direct evidence of the party's intentions may be received to resolve the equivocation.

51. The extrinsic evidence in the form of Mr. Robertson's oral testimony persuades me that, at the time the provisions of clause 28.03(a) were negotiated in November 1977, the words "----the applicable economy fare or its equivalent" were intended by the parties to mean that if an employee is required by the employer to travel to or from his headquarters area as normally defined by the employer and he elects to travel via scheduled air carrier he is entitled to travel at what has now become known as "full economy fare", and the employer under this provision of the collective agreement is not entitled to use discounted fares for such an employee. In my view, the evidence of Messrs. Lévesque and Robertson show that discounted fares, by whatever name they may be known, are simply not the equivalent of "the applicable economy fare" within the meaning of clause 28.03(a) of the collective agreement.

52. The evidence shows that at the time the provisions of clause 28.03(a) of the collective agreement were first negotiated in 1977, "economy air fare" meant full economy fare and although air carriers were beginning to publicize various types of economy fares such as "Connoisseur Service" and "Empress Class", no clear picture had emerged as to the significance of these terms. In negotiating the clause, the parties made no attempt to detail the

different types of fares and simply resorted to the expression "or its equivalent" in order to encompass the use by air carriers of names or expressions that describe the service provided at full economy fares.

53. The wording of clause 28.03(a) was not changed when it was incorporated in the current collective agreement (Exhibit G-1). In addition, the provisions of clause 28.05 were also carried forward from the agreement negotiated in 1977 without change. That clause makes it clear that the current Treasury Board travel directive does not apply to employees in the Air Traffic Control Group bargaining unit if the provisions of that directive are modified by the collective agreement. For this reason, paragraphs .2.2.2 at page 10 and .3.2.3 at page 13 of the Treasury Board travel directive (Exhibit E-3) are inapplicable to the grievors because of the modifying effect of clause 28.03(a) of the collective agreement.

54. The grievances are allowed and I hold that the grievors, when they were required by the employer to travel to or from their headquarters area and where they elected to engage in such travel via scheduled air carrier, were entitled to do so at the applicable economy fare and not at any discounted fare, in accordance with clause 28.03(a) of the collective agreement.

Walter L. Nisbet, Q.C.,
Deputy Chairman.

OTTAWA, May 8, 1984.