

**IN THE MATTER OF A MEDIATION-ARBITRATION**

**BETWEEN:**

**NAV CANADA  
(the “Employer”)**

**-and-**

**CANADIAN AIR TRAFFIC CONTROL ASSOCIATION,  
CAW-CANADA, LOCAL 5454  
(the “Union”)**

**RE: INTEREST ARBITRATION**

**BOARD OF ARBITRATION:**

<b>Michel G. Picher</b>	<b>- Chair</b>
<b>Brian W. Burkett</b>	<b>- Company Nominee</b>
<b>Rob Allan</b>	<b>- Union Nominee</b>

**APPEARANCES FOR THE EMPLOYER:**

<b>Jacques A. Emond</b>	<b>- Chief Negotiator</b>
<b>Richard J. Dixon</b>	<b>- Vice President and Human Resources Officer</b>
<b>Elizabeth Cameron</b>	<b>- Assistant Vice President, Labour and Employee Relations</b>

- |                          |   |
|--------------------------|---|
| <b>Brian K. Aitken</b>   | - Executive Vice President, Finance and Chief Financial Officer |
| <b>Raymond G. Bohn</b>   | - Vice President, Revenue and Pension Administration            |
| <b>Trevor Johnson</b>    | - Assistant Vice President, Service Delivery                    |
| <b>George Donovan</b>    | - Assistant General Counsel                                     |
| <b>Helle Ottosen</b>     | - Director, Operations Finance                                  |
| <b>Phil Valois</b>       | - Labour Relations Manager                                      |
| <b>Marie-Pier Berman</b> | - Shift Manager, Winnipeg ACC                                   |
| <b>Jeff Edison</b>       | - Shift Manager, Gander ACC                                     |
| <b>Sylvain Guindon</b>   | - Labour Relations Manager                                      |
| <b>Brenda Seeger</b>     | - Labour and Employee Relations Advisor                         |

**APPEARANCES FOR THE ASSOCIATION:**

- |                            |                                      |
|----------------------------|--------------------------------------|
| <b>Greg Myles</b>          | - President, CATCA                   |
| <b>Jim Stanford</b>        | - CAW Economist                      |
| <b>Jo-Ann Hannah</b>       | - CAW Director Pensions and Benefits |
| <b>Gaetane Madou</b>       | - Actuary, Poulin Actuarial Services |
| <b>Ron Smith</b>           | - CAW Director of Transportation     |
| <b>Doug Best</b>           | - Executive Vice President CATCA     |
| <b>Scott Shields</b>       | - Regional Vice President            |
| <b>Peter Duffey</b>        | - Regional Vice President            |
| <b>James Krause</b>        | - Regional Vice President            |
| <b>Gary Roach</b>          | - Regional Vice President            |
| <b>Pierre Gaumond</b>      | - Acting Regional Vice President     |
| <b>Sophie Noel</b>         | - Committee Member                   |
| <b>Geneviève St-Pierre</b> | - Committee Member                   |
| <b>Mark Bernard</b>        | - Committee Member                   |
| <b>David Hartwick</b>      | - Committee Member                   |
| <b>James Russell</b>       | - Committee Member                   |
| <b>David Doerksen</b>      | - Committee Member                   |
| <b>Sylvain Laforest</b>    | - Committee Member                   |
| <b>Gordon Howe</b>         | - Committee Member                   |
| <b>Paul Turner</b>         | - Committee Member                   |

**Mediation-Arbitration meetings in this matter were held in Ottawa, Ontario on February 26 and 27, 2013 and March 1, 2, 3 and 4, 2013.**

## AWARD

This interest arbitration Award is the result of a mediation-arbitration process undertaken by the agreement of the parties. The negotiation and mediation-arbitration process relates to establishing the terms and conditions of the parties' collective agreement under the *Canada Labour Code*, to be in effect from April 1, 2013 to March 31, 2016.

The bargaining process commenced with the Union's notice to bargain given to the Company on December 1, 2012. The Board is advised that the parties met in Vancouver in December 2012, and subsequently on a number of occasions in Ottawa in January of 2013. Those negotiations resulted in the settlement of a number of issues. The list of issues resolved by agreement is appended hereto as Appendix A to this Award and those settlements are hereby incorporated as part of this Award.

The Company, a private sector, not for profit corporation, is responsible for the ownership and operation of all civil air navigation in Canada. The Company assumed responsibility for the air traffic control system in Canada from the Federal Government in 1996 in accordance with the *Civil Air Navigation Services Commercialization Act*. NAV CANADA's 4,800 employees include some 1,995 air traffic controllers represented by the Canadian Air Traffic Control Association (CATCA).

The Company and the air traffic controllers represented by CATCA are responsible for the safe and efficient movement of aircraft in Canadian domestic air space as well as in segments of international air space, such as the North Atlantic and the Arctic, which are assigned to Canadian control under international treaties. Operations must obviously be continuous, on a 24-hour per day, seven days per week basis. The movement of aircraft in the domestic air space and international air space assigned to Canadian control, for which NAV CANADA is responsible, is overseen in seven area control centres which are located in Vancouver, Edmonton, Winnipeg, Toronto, Montreal, Moncton and Gander. Those centres are responsible for overseeing domestic and international flights within the air space assigned to NAV CANADA, whether those flights involve domestic take-offs and landings or simply involve the over-flight of Canadian air space. In addition to being assigned to the seven area control centres, air traffic controllers are also responsible for take-off and landing operations in 42 control towers in Canada's airports. One thousand, two hundred and seventy-six (1,276) bargaining unit employees are assigned to the area control centres while 629 work in airport control towers and the remainder work in non-operational roles across Canada.

The accomplishments of the Company and its air traffic controllers are truly impressive. For example, in 2011 they were responsible for some 12 million aircraft movements, including take-offs, landings and over flights of the air space for which they are responsible. The volume of service is of some significance, as the vast majority of revenue to the Company is from the fees which it receives from each and every aircraft

which utilizes NAV CANADA's air traffic control services. Most significantly, it is fair to say that the air traffic control system for which these parties are responsible is among the safest and most efficient in the world, exhibiting the highest degree of cost effectiveness.

The parties before this Board are highly professional and sophisticated in their respective approaches to collective bargaining. The history of their bargaining, including the instant process, reflects a high degree of mutual trust and an overall bargaining relationship that can fairly be described as exemplary. In the past, as in the instant round, they have bargained responsibly and constructively, responding to economic and operational realities in ways that have served and enhanced their mutual interests. For example, for the last three rounds of bargaining the parties have fashioned their own process of bargaining, using devices such as bargaining facilitation and mediation, thereby reaching collective agreements.

At the conclusion of the initial mediation stage of the instant process the Board was advised that there remained some 12 outstanding issues to be resolved. Those issues are as follows:

- Acting Pay
- Definition of Normal Pay
- Care and Nurturing Leave
- Leave – Annual
- Medical Certificates
- Pension
- Premium – French Proficiency
- Premium – Midnight
- Premium – Weekends
- Salary Increase

- Staffing – Area of Selection
- Time Off in Lieu (TOIL)

We propose to deal with the issues as they appear in the above list, save that the two most significant economic issues, pension and salary increase, shall be dealt with at the conclusion.

## **ACTING PAY**

The Union seeks a change in the threshold at which an employee temporarily promoted into the responsibilities of a more highly paid position receives the pay of that position. Perhaps the most typical occurrence is the temporary promotion of an air traffic controller working in a tower or ACC into the position of supervisor, itself a more highly paid bargaining unit position. Under the status quo, the air traffic controller who receives such a temporary promotion does not receive the pay of the higher position until he or she has worked in that position for three days. The historic rationale for that arrangement appears to be based on the Company's view that a temporarily promoted individual does not in fact discharge the full responsibilities of the higher position until he or she has actually exercised them for several days. The Union's position is that an employee should receive the higher rate of acting pay from the moment he or she steps into the responsibilities of the higher paid classification.

We can see a degree of merit in the positions of both parties. While equity would suggest that an employee should be entitled to receive the wage rate of a higher

classification into which he or she is promoted on a temporary basis, we cannot dismiss out of hand the Company's suggestion that the full value of the employee in the promoted position is not truly realized until he or she has completed a brief period of orientation and adjustment to the responsibilities of the higher position. Indeed, some of those responsibilities may not in fact be exercised on the first day or days of a temporary promotion. On the other hand, we are not unsympathetic to the position of the Union to the effect that a lag time of three days arguable works an unfair advantage to the Company and a degree of inequity in the compensation of the employee who is temporarily promoted.

Having considered this issue, it is our view that a period of two days in the higher responsibilities of a temporary promotion should be sufficient to bring the promoted employee to the necessary level of responsibility and productivity in the higher position. We therefore direct that the acting pay provision of the collective agreement be amended to provide that an employee who is temporarily promoted into a higher rated position shall be entitled to the wages of that position after two days of work performed in the promoted capacity.

This change will take effect one month following the issuance of award to allow for systems configuration.

## **DEFINITION OF NORMAL PAY**

By the terms of Letter of Understanding 1999-06, appended to the collective agreement, the parties have made provision for maintenance of salary (MOS). The language of the letter of understanding includes the following:

Provided a controller has performed active control duties for NAV CANADA (or in the case of a "continued employee" for NAV CANADA and Transport Canada) for a period of five (5) years and is no longer able to perform active control duties due to medical reasons, it was agreed that the individual involved would suffer no loss of his or her normal pay for a minimum of one (1) year.

The pay of air traffic controllers is in fact made up of two components: their base pay as reflected in the annual rates of pay found in Appendix "A" of the collective agreement and, secondly, the annual ATC premium payable to air traffic controllers depending on the burden of their location and related responsibilities. There are 14 levels of ATC premium in the expiring collective agreement ranging from a high of \$28,726 to a low of \$3,478.

The Union's position is that an air traffic controller on maintenance of salary should not lose the advantage of his or her ATC premium. It submits that otherwise the employee is in fact not maintained without a loss of earnings in the event of a medical leave of absence, in a manner which the Union submits is contrary to the underlying intention of the letter of understanding governing MOS.

The Union proposes the following language:

“Normal pay” means compensation for the performance of duties of a position including Supervisory Differential, but, exclusive of allowances, special remuneration, overtime, other compensation, and other gratuities. While on MOS, in accordance with LOU 1999-06, normal pay shall also include ATC Premium/OFP.

On this issue we also find the position of the Union to be compelling. Firstly, it should be noted that Letter of Understanding 1999-06 imposes meaningful limitations on maintenance of salary. Firstly, it is available only if an employee is unable to perform other duties which would fall within their physical qualifications, and failing an alternate assignment, employees must first utilize all earned leave credits. Additionally, MOS is only available for the cumulative period of one year during an employee’s total period of employment.

Considering that the intention of maintenance of salary is to provide a meaningful form of earnings replacement, and that ATC premiums can represent earnings in excess of \$28,000 annually, as is also the case for annual operational facility premiums (OFP), the loss of these premiums merely by reason of an illness or physical injury is difficult to square with the fundamental intention of Letter of Understanding 1999-06. We are sympathetic to the concern which underlies the Union’s demand, namely to provide meaningful wage replacement in the event of an employee’s inability to perform active control duties for medical reasons. We therefore allow the Union’s request and

direct that the collective agreement be amended to include within the definition of “normal pay” the following:

“While on MOS, in accordance with LOU 1999-06, normal pay shall also include ATC Premium/OFP.”

## **CARE AND NURTURING LEAVE**

The Company has asked for some relief in respect of the administration of care and nurturing leave. Care and nurturing leave is unpaid leave granted to the parent of any child or children of preschool age, to allow that employee to devote a period of time dedicated to the care and attention of a young child or children. The Company’s concern is that more often than not care and nurturing leave is taken, as a matter of the employee’s discretion, during the summer period when the workplace complement is already reduced by reason of scheduled annual leaves or vacation periods. NAV CANADA’s representatives further note that traffic is at its highest during the summer months, the period during which it requires the highest number of shifts/days to deliver the necessary service. That, it submits, is compounded by the lowest availability of staff being experienced in the summer period, a problem which it stresses is to some degree exacerbated by employees who exercise their right to take maternity/parental leave or other types of leave. According to the materials provided by the Company, in the ACCs in financial year 2012 care and nurturing constituted 19 percent of all leaves without pay taken by employees, while in towers, for the same period, care and nurturing accounted

for 13 percent of unpaid leaves, all of these causing considerable hardship on the ability to schedule normal vacation leave.

To be sure there are conditions and limitations attaching to care and nurturing leave. That form of leave must be taken for a minimum of nine consecutive weeks, and only after a ten week notice period before the commencement of the leave. Additionally, an individual employee is entitled to no more than five years of care and nurturing leave over the period of his or her career.

Having heard the parties and considered the merits of the issue, we are satisfied that there is scope for some adjustment in the provisions respecting access to care and nurturing leave, particularly during the critical summer period. We therefore direct that the collective agreement be amended to provide that if an employee requests to take a period of care and nurturing leave which is for a duration of eighteen (18) or less and falls in whole or in part within the period between June 15 and September 15, the request for such leave must fall within a notice period of between March 1 and March 15, it being understood that notification of approvals shall be made within a reasonable time thereafter. Care and nurturing leave may be declined where operational requirements do not allow it. However, in the event that the Company invokes operations requirements, it shall only be after a meaningful consultation between the Union's local representative, Union RVP and the General Manager of each FIR. Additionally, the collective agreement shall be amended to reflect that in the event of a

care and nurturing leave for a period of eighteen weeks or less, such leave period must end on July 31 or begin on August 1.

## **ANNUAL LEAVE**

Bargaining unit employees enjoy a relatively generous entitlement to annual leave. The leave period varies from 15 days for employees with less than eight years of service to a maximum of 30 days for those with in excess of 28 years of service. Under the current arrangement there are some six milestones for increasing leave periods. The Union proposes to reduce the number of milestones following the initial period of employment to four. The existing and proposed leave entitlements and milestones are reflected in the following chart:

### **LEAVE ENTITLEMENTS AND MILESTONES**

#### **► CURRENT**

<b>SERVICE</b>	<b>LEAVE</b>
<b>&lt;8 Years</b>	15 Days
<b>8 – 15 Years</b>	20 Days
<b>16 Years</b>	22 Days
<b>17 Years</b>	23 Days
<b>18 Years</b>	25 Days
<b>27 Years</b>	27 Days
<b>28 Years +</b>	30 Days

#### **► PROPOSAL**

<b>SERVICE</b>	<b>LEAVE</b>
<b>&lt;8 Years</b>	15 Days
<b>8 – 16 Years</b>	21 Days
<b>17 – 24 Years</b>	25 Days
<b>25 Years</b>	27 Days
<b>28 Years +</b>	31 Days

The Company submits that the vacation leave entitlements at NAV CANADA compare favourably to those found in comparable employers within the federal transportation field, drawing the Board's attention to the vacation leave entitlements

found in CAW-Canada collective agreements in the railway and airline industries, as well as agreements of other unions within the same sectors. Additionally, the Company emphasizes that the Union's request in relation to adjustments in vacation leave entitlements is not without some cost. It is not disputed that the Union's proposal would occasion an average increase of 0.6 annual leave days per year per employee. Expressed in hours, that would represent an additional 5.08 additional paid hours per employee on an annual basis. The Company maintains that the existing annual vacation framework is generous and compares well with industry norms, arguing that it should not be disturbed.

We agree. As stressed by NAV CANADA, its air traffic controllers work 222 days per year, compared to the norm of 260 days for employees who work the normal Monday to Friday work week. Additionally, for reasons more amply related below in the segment of this Award dealing with time off in lieu, air traffic controllers also have the advantage of relatively generous leave periods other than vacation leave. On the whole, therefore, we can see no compelling reason to change this aspect of the parties' collective agreement. The Union's request in respect of leave entitlements and milestones is therefore declined.

## **MEDICAL CERTIFICATES**

For some years, and under the expiring collective agreement, employees have been responsible for paying the cost of any medical certificates which they may be required to produce in relation to medical leaves of absence. The Union requests that the Company bear the costs of those certificates, a position which NAV CANADA strenuously resists. While the Board did not hear extensive submissions in respect of this issue, it does not appear disputed that the requirement for a doctor's note generally applies when a given period of continuous sick leaves exceeds five days or when, calculated over a year, an employee has taken more than 10 days of sick leave. We were advised that the cost of such medical certificates varies from province to province, being in the order of \$50 to \$60 in most places, to what is apparently a maximum of \$150 in the province of Quebec.

As we have been provided no evidence of abuse or unfairness visited upon employees by reason of the occasional need to provide medical certificates, we are not persuaded that this is a Union demand that should be granted at this time. The Union's request in respect of the Company paying for the cost of medical certificates is therefore denied.

## **FRENCH PROFICIENCY PREMIUM**

Article 17.09 of the collective agreement provides for an Operational Language Recognition Premium. In essence, a premium of \$800 to be paid annually. The Union seeks an increase in the premium, a position rejected by NAV CANADA.

No compelling basis has been put forward before this Board for an increase in the language premium. While we readily appreciate the value of bilingual capacity in operating controllers who are required to work in both languages, we can see no significant basis to conclude that the existing language recognition premium is inadequate, or that to maintain the status quo will work any undue hardship on the employees concerned. For these reasons the Union's request concerning a proposed increase in the Operational Language Recognition Premium is respectfully declined.

## **MIDNIGHT PREMIUM**

The expiring collective agreement provides a shift premium of \$17 per shift for midnight shifts. Specifically, article 22.01 provides for a premium of \$17, "... for each shift worked between the hours 23:00 and 08:00". The Union proposes an increase in that premium to an amount of \$25 per shift, effective April 1, 2013. Additionally, it asks for an increase in the midnight premium, in accordance with an established formula, for all midnight shifts in excess of 40 in the 12 month period from April 1<sup>st</sup> to March 31<sup>st</sup>, that change to become effective October 1, 2013. The formula which it would apply to

what is characterized as the “midnight premium multiplier” is 1.50 multiplied by the regular midnight shift premium. In other words, once an employee has achieved 40 midnight shifts in a given year his or her midnight shift premium is to increase by 50 percent.

Having considered the merits of this issue, we are satisfied that the Union’s request should be partially granted with respect to both aspects of the midnight premium. We therefore direct that effective April 1, 2013 the midnight shift premium be increased to \$20 per shift. Additionally, we direct that the midnight shift premium for all midnight shifts in excess of 45 in the 12 month period from April 1 to March 31 shall be payable at 1.25 times the regular midnight shift premium, effective October 1, 2013.

## **WEEKEND PREMIUM**

Under the expiring collective agreement article 22.03 provides that employees are to receive an additional premium of \$1.25 per hour for non-overtime hours worked on Saturday or on Sunday. The premium is also prorated for partial hours. The Union proposes an increase in the weekend premium to the rate of \$2.00 per hour. The Company opposes any change.

We are satisfied that the Union’s request is not entirely unreasonable. With the passage of time over succeeding collective agreements, and the erosinary effect of inflation, it is not inappropriate to adjust premiums from time to time, if only to maintain

their standing relative to periodic wage adjustments. We therefore direct that the weekend premium be adjusted to the level of \$1.75 per hour, effective April 1, 2013.

## **STAFFING – AREA OF SELECTION**

Under the collective agreement it is within the discretion of the Company to limit candidacy for promotions to employees within a given location. For example, should the bargaining unit position of a supervisor be vacant in a given tower, it is the employees of that tower alone who are to be considered for promotion into that vacancy. The Union submits that that limitation should be removed, so that candidates from a broader geographic base can be considered for a promotion into a vacancy which may not be at their current work location or, in the case of an area control centre, their particular speciality. Not only because of the potential moving costs which the Union's proposal might involve, but also by reason of the extensive qualification period which appointees from other locations or other specialities might require, the Company opposes the Union's proposal.

We find the Company's position to be persuasive in respect of this issue, at this time. The promotion system has been in place for many years and appears to have served the parties well. The annual job bidding process by seniority allows individual employees to change locations should they wish to do so with a view to maximizing their opportunities for advancement. Conversely, the existing system of selection from an employee for promotion from within a given tower or in the area control centres,

within a given specialty, provides a measure of efficiency and stability which, in our view, should not be disturbed at this time. The Union's request in respect of the area of selection for promotions is therefore declined.

## **TIME OFF IN LIEU (TOIL)**

Under the expiring collective agreement air traffic controllers are entitled to bank overtime. In other words, should an employee work an eight hour day as overtime he or she is entitled to decline to receive any payment for that day and to then bank a credit for two days off in lieu of payment. For employees willing to work substantial overtime shifts, the banking of TOIL can become considerable. NAV CANADA expresses concerns that time off in lieu is frequently claimed by employees during inconvenient periods, such as the summer months when operations are at their busiest and the complement of employees may already be reduced by reason of scheduled annual leaves. The Company submits that the double time banking of time off in lieu, as contemplated in part under article 20.02(a) of the collective agreement, is overly burdensome, as it occasions a requirement to backfill from 35 percent to 70 percent of the time, depending on the time of the year. Moreover, to the extent that an employee claiming TOIL may be absent from the workplace, further overtime may need to be scheduled on a backfill basis, thereby pyramiding the effect.

NAV CANADA does not propose to do away with TOIL entirely. Rather, it expresses the following concerns:

“The current TOIL leave entitlements give no regard to the overtime created.

...

The current leave entitlements under TOIL hamper our ability to manage overtime costs and operate efficiently, especially in the summer.”

The material before us confirms that there has been an evolution in the administration of TOIL, prompted in substantial part by arbitration awards issued in 2001 and 2010, as well as a settlement reached between the parties prior to arbitration in respect of a grievance in 2002. As the Company characterizes it, by reason of these developments TOIL has evolved from being a “requested form of leave” into becoming “a perceived leave entitlement”.

In our discussions with the parties it became apparent that there are misconceptions with respect the granting of TOIL, particularly in some locations. The most recent leading arbitration award confirms that when an employee makes a request for time off in lieu leave on a particular date, and that by reason of operational requirements that date is unacceptable to the employer, management must offer reasonable alternative dates to the employee. If the employee does not accept the alternative dates offered, the matter is at an end. However, it appears that in some locations when employees decline the alternative dates offered, managers feel themselves compelled to continue offering further alternative dates until some acceptable day is found. That is plainly not the Company’s obligation under article

20.02(a) as it has been interpreted at arbitration. It should also be noted that any unused TOIL ceases to be banked, and is paid out, as of March 31<sup>st</sup> in each calendar year.

The Board is persuaded that it is not appropriate to make any adjustment with respect to the time off in lieu provisions of the collective agreement. However, we strongly recommend that the parties engage in a joint education program with respect to the proper administration of TOIL at all locations in the system, nationally. It appears to this Board that the excessive burden being experienced by NAV CANADA in respect of employees taking time off in lieu from overtime compensated at double time can be corrected and managed by a proper return to first principles. We therefore deem it appropriate to make no further award with respect to this issue at this time.

## **PENSION**

The incumbent members of the bargaining unit are the beneficiaries of what can fairly be described as a generous defined benefit pension plan. The traditional plan, referred to as "Part A" of the NAV CANADA Pension Plan, has prompted substantial solvency concerns from the standpoint of the Company. For example, under the Part A of the NAV CANADA Pension Plan, the statutory solvency deficiency, based on a three year average of solvency ratios which are to be funded over five years with either cash or letters of credit, constitutes a deficit of some \$509 million dollars as of January 2012. Assuming no change in its pension plan design the Company projects that by 2047 it

will face going concern liabilities in excess of 8 billion dollars, a prospect which it submits pose an existential threat.

To address the problem NAV CANADA and the Union fashioned a second pension plan, referred to as “Part B” of the NAV CANADA Pension Plan, the plan which is now compulsory for new externally hired managers and non-union staff and is voluntary for CATCA members and members of 5 other bargaining units. The following chart reflects a more detailed comparison of the features of both the Part A and Part B pension alternatives.

NCPPT PART A & PART B  
PLAN PROVISION SUMMARY

	Part A	Part B
Defined Benefit Formula	2.0% x Best 5/6-Year Average Earnings x Pensionable Service	1.1% x Best 5/6-Year Average Earnings x Pensionable Service
CPP Offset at Age 65	0.7% x Best 3-Year Average CPP Earnings x Pensionable Service	0.5% x Best 5-Year Average CPP Earnings x Pensionable Service
Member Contributions	7.5% (9.5% for Operational Air Traffic Controllers) x Pensionable Earnings less CPP Contributions	None
Indexation	Pre-Retirement: 100% CPI Post-Retirement: 100% CPI	Pre-Retirement : None Post-Retirement : Ad-hoc
Unreduced Pension	i) Age 55 and 30 Years of Pensionable Service ii) Age 50 and 25 Years of Operational Service iii) Age 60	i) Age + Pensionable Service = 85 points ii) Age 65
Early Retirement Reduction	5% Per Year of Service prior to Unreduced Pension or Age 60	3% Per Year of Service prior to Unreduced Pension or Age 65
Survivor Pension	50% of Member's Unreduced Pension	60% of Pension Payable to Member

The Company proposes a three-part solution:

1. Effective January 1, 2014, all new employees represented by the Union shall be enrolled in PART B of the NAV CANADA Pension Plan.
2. Approach OSFI and request an amendment to Part A to remove CPI protection to pension plan benefits in the event of bankruptcy or plan termination.

In the unlikely event that the pension plan would be terminated in the future, CPI indexing that is currently provided would be replaced by fixed rate indexing to the extent that surplus assets would remain upon final settlement. The Company will continue to fund the Plan on a going concern basis, including CPI indexation, based on all relevant factors, including the guidance provided annually by its independent actuaries. Ongoing indexing of pensions will continue to occur each year as is done currently, subject to the foregoing. Also, the Company will not terminate the pension plan without the agreement of CATCA.

3. Effective January 1, 2014, a member who terminates from Part A and elects to defer receipt of his pension is entitled to an inflation adjustment with respect to pensionable service accumulated up to December 31, 2013., beyond which no inflation adjustment will apply until commencement of his pension.

The changes proposed by the Company will be effective January 1, 2014, subject to such approvals as would be required from The Office of the Superintendent of Financial Institutions of Canada (OSFI).

In our view there is a substantial appeal to what the Company proposes. Each element of change will be dealt with separately below.

With regard to the first change (new hires in Part B), it should be stressed that the Company's suggestion does not involve a conversion from a defined benefit plan to a defined contribution plan. Part B remains a defined benefit plan for new employees.

With regard to the third change (pre-retirement indexation for future Part A service) it serves to remove a low utilized benefit that is unheard of in the private sector.

Neither of these proposals impact accrued benefits for current employees while the Plan remains on-going, and therefore involves no frustration of existing expectations or vested rights.

We therefore award the pension proposal of NAV CANADA to place all newly hired employees under the provisions of Part B of the NAV CANADA Pension Plan effective January 1, 2014. Further, we award the removal of pre-retirement indexation, for those who leave the company prior to normal retirement from Plan A for all future service from January 1, 2014.

With regard to the second pension proposal outlined by the employer (post retirement indexation in the event of Bankruptcy or Plan termination) we also agree with this argument. Bearing in mind the serious nature of the Company's growing pension burden, what NAV Canada proposes does involve significant relief in respect of escalating solvency funding requirements. In our view the alternative, which would be to do nothing, would be tantamount to sleep walking towards an unsupportable solvency crisis. Given the unique nature of NAV CANADA as the monopoly supplier of civil air navigation services in Canada, the probability of NAV CANADA going bankrupt under normal market conditions is remote. In arbitration presentations the Union made representations that they had joined the Company in the past in making representations to OSFI to support these changes and will continue to do so at any future meeting with OSFI, or subsequent related processes. Accordingly, we direct the Union's President to attend with management representatives at any future meeting with OSFI or subsequent related processes, and to lend the Union's approval and support for the changes proposed in a reasonable effort to secure any necessary OSFI approvals.

In consideration of this support, and as noted below in our Award with respect to wages, a wage reopener opportunity shall be triggered in the event that OSFI does approve the proposed change in NAV CANADA's pension plan.

It is recommended that the Company advise the Union's President of any planned submissions or tentative proposals to be made to Federal authorities in respect of any pension reform or change.

As additional consideration of these changes, the panel awards the following pension related amendment and request of the Union:

The Union requested that the 1% non-pensionable wage increase agreed to in the 2005 round of bargaining now be restored for pensionable service status. The Company suggested tying this change conditionally on the outcome of the OSFI process. However, we feel that this change should be awarded now, effective April 1, 2013 in consideration of the significant pension changes which are part of this award. The Board remits to the parties for their discussion and consideration the matter of the possible adjustment of the calculation of pensionable earnings for those current employees who would retire within the following five years. Any changes or adjustments in relation to those employees are to be finalized and implemented no later than the end of 2013.

## **SALARY INCREASE**

The position of the Company is that the air traffic controllers of the bargaining unit are among the most highly paid unionized employees in Canada. It submits that there should be no discrete wage increase awarded, save that this Board should direct that the pay scales found within the collective agreement should be adjusted periodically, based on any increase not to exceed inflation (at the time of the arbitration the Core CPI was reported as 0.6%).

The Union's representatives express some consternation with the Company's position. They submit that it is reasonable, and indeed normal, for employees to know at the commencement of a three-year collective agreement what their wages will be at any given time in the future. The Union argued that to simply tie any wage adjustments to an inflationary limit would be unprecedented, going well beyond the traditional protections of including a cost of living allowance. Recognizing that the employer was not suggesting a COLA clause as a hedge against inflation to protect clearly defined wage increases, the Union proposes that the salary grids found within the collective agreement should be increased by three percent in each of the three years of the collective agreement. The Union also proposes that there should be a wage reopener in the event that OSFI should approve the Company's proposal, accepted in this Award, to substantially reduce the Company's solvency burden in respect of its pension plan.

As between the two positions, we find the Union's position to be preferable, subject only to the rate of wage increase which should be awarded. In the current economy, collective bargaining wage settlements in the range of one to two percent annually are not uncommon. Moreover, they have generally corresponded to rates of inflation in the overall Consumer Price Index, bearing in mind that in 2011 Statistics Canada reports the overall Consumer Price Index increase as 2.9 percent and for 2012, 1.5 percent. During these same periods, CATCA received increases of 3% each year.

We therefore determine that annual wage increases in the range of two percent are not inappropriate, given the overall adjustments to the Company's economic burden

reflected in this Award. We note that in 2009 the parties' collective agreement involved a staged form of percentage increase. We are of the view that that is not inappropriate, at least in part, with respect to the three year collective agreement which is the subject of this Award.

We therefore direct that the wages at all points of the salary grids and the ATC and OFP premiums contained within the collective agreement be increased by one percent effective April 1, 2013, and that they be increased by a further one percent effective October 1, 2013. Subsequently, there shall be a further increase of two percent effective April 1, 2014 and an additional two percent effective April 1, 2015. Additionally, should OSFI approve the Company's proposal for a reduction of its solvency burden in respect of its pension plan, as discussed above, the Union shall then be entitled to a wage reopener, based on 30 days' notice, a matter over which we retain jurisdiction for the purposes of mediation-arbitration should the parties be unable to agree.

Moreover, in further consideration of the substantial future advantage being realized by the Company by reason of all new employees being subject to Part B of the NAV CANADA Pension Plan, we feel that additional consideration should be shown to future newly hired employees. For all new hires, upon initial qualification and effective January 1, 2014, there shall be a two thousand dollar (\$2000) lump sum payment. Such funds, which shall be non-pensionable, may be contributed directly to an RRSP to more effectively assist newly hired employees for their retirement. During mediation the

parties discussed a methodology for a group RRSP program that would allow employees in Pension Plan B to direct their contributions, to the maximum allowable, to this program. We direct the parties to meet and discuss establishing an RRSP program to this end. We remain fully seized of the issue should they be unable to reach agreement, in whole or in part.

As a general matter, we retain jurisdiction with respect to the interpretation or implementation of all aspects of this Award.

Dated at Ottawa, Ontario this 8<sup>th</sup> day of April, 2013.

*" Michel G. Picher "*

Michel G. Picher  
Chair

*" Brian W. Burkett "*

Brian W. Burkett  
Company Nominee

*" I dissent "*

Rob Allan  
Union Nominee

## **Dissent of Rob Allan – Union Nominee**

With the highest regard for the bargaining process recently concluded, the parties involved and my colleagues on the Arbitration Panel, I must respectfully dissent from the decision of the majority on the following two issues:

- Annual Leave; and
- Pension

### **Annual Leave**

Because a large number of its members are in the 15-20 years-of-service range, the Union sought quantum changes to a series of milestones it feels no longer meets the needs of the membership. After careful consideration of the Company's concerns such as cost and the potential requirement for back-fill overtime, CATCA proposed the revised grid as can be seen in the award.

I feel the Union proposed a very reasonable, modest and carefully thought out proposal that took the company's concerns into consideration, yet in no way would impact Nav Canada's ability to deliver service to its customers. For these reasons I find the company's unwillingness to agree to re-structure the annual leave milestones because of an increase of slightly more than 5 hours per year and the subsequent award to be unreasonable.

### **Pension**

It must be noted that throughout recent history this Union has understood the problems posed by the Plan and attempted, with varying degrees of success, to resolve the problems identified by the Employer. Trapped capital was identified by the Company and a change to allow Letters of Credit was championed by the Union. Next, the Employer identified runaway solvency deficits as a problem. The solution to this problem was not acceptable to the Company. In this instant case, we find the Employer claiming the size of future liabilities is the problem. The Union should properly feel frustrated at the constantly moving goal posts.

The Employer maintains that the pension plan represents an *existential threat* to the future of the Company and therefore to the plan itself. In my opinion, there is a very real risk to the Company, existential or not, and that risk is in management's categorical refusal to raise user rates. The Union demonstrated the legal responsibility that the Company clearly accepted when it acquired the business AND the pension plan (including assets and surpluses) from the Federal Government in 1996.

The concept that the size of the liabilities for a Plan with zero retirees on inception would grow as people retired, could not surprise the Employer. Further, that the Plan would exceed the “value” of the Company assets, which are for the most part fixed (and irrelevant), should also not surprise the employer. It only follows logic and reason and should form a long term part of the Employer’s financing and charging regime.

A continued refusal to raise rates when it is so obviously required is cause for concern both for the Pension Plan and a key safety sensitive service.

As stated in the award of the majority, the Company’s pension request was in three parts:

1. Have the Nav Canada Pension Plan Part B (NCPB Part B) be mandatory for all new employees.
2. Amend the NCPB Part A to remove CPI inflation protection from pension benefits available in the event of plan termination.
3. Remove pre-retirement indexation from the plan entirely.

Part two of the company’s request will require the parties to jointly make presentations to OSFI. CATCA has been, for many years, working diligently both separately and with Nav Canada making appearances before OSFI and other Government institutions in an attempt to rationalize and change pension solvency calculations affecting the future viability of the plan. In fact, CATCA would at any opportunity, continue to join Nav Canada in making future presentations to OSFI even without this award. I do, however, acknowledge the importance of the award’s ‘joint requirement’ aspect to the future discussions, especially in light of the success of recent such awards, particularly at Air Canada. The Union looks forward to and welcomes any future clear and forthright discussions with the Company and the federal government on the issue. As this has no impact on inflation protection, except in the unlikely event of bankruptcy or plan wind-up, for current employees, I have no further comment.

Part three of the request deals with pre-retirement indexing and only impacts people who resign from the Company and wish to defer their pension to a later date. The award of part three in no way affects the normal retirement benefits for current employees, therefore, I have no further comment.

To be very clear, the Union made no proposals during collective bargaining or arbitration with respect to the Pension Plan. In fact, it wanted nothing more or less than the status quo, vigorously contesting any change, especially given the Company’s reluctance once again to raise customer rates as a way to partially offset the solvency deficit. The Union suggested that given past rate cuts, coupled with the improving strength of airlines, that Nav Canada not only has the mandate, but indeed

the obligation to raise rates when warranted. CATCA also convinced the Board that it had shown leadership over the past many years in assisting the Company in attempting to find ways to solve the problem. It is for these very reasons CATCA is so vehemently opposed to having the Nav Canada Pension Plan Part B being mandatory for all new employees. Especially Part B in its present form, absent any improvements or modifications which would make it more appealing to the Union and its future membership. This I see as an enormous gain for the Company, with no corresponding quid pro quo for the current membership of the Union.

The resultant effect will be, in reality, a two-tiered workforce – a result most Unions strive to avoid (as CATCA strenuously did during bargaining and arbitration) at all cost. I feel that over the passage of time, the result will be poor morale amongst its new members, increasingly lower levels of employee engagement than presently exist amongst new employees and most importantly, will lead to significant pressure on the Union and its leadership to advance future requests from newer members to seek pension equity with their more senior colleagues.

The aforementioned rationale notwithstanding, the diminished retirement benefits for newly hired employees of Nav Canada, specifically CATCA members, will be a challenge for both parties, not to mention the new hires. In my opinion, Nav Canada should take the lead in not only providing appropriate vehicles within which new hires can deposit their non-contributory wages, but must also ensure appropriate education on the plan differences and ways to best maximize financial security in retirement, rather than simply off-loading the problem onto public systems.

Moreover, given this significant gain for the Company and the assistance and leadership CATCA has provided over the years, I would encourage Nav Canada to give consideration to acknowledging this gain by recognizing the long-term nature of pensions and the necessary patience required when administering such plans (rather than short-term reactions to events) by not looking for any future pension concessions from the Union for many years. The Union has shown leadership in this way, by not only acknowledging the solvency issues and educating its members as such, but by also not making any pension demands during bargaining since 2005. Such an acknowledgment by the Company, in my opinion, would assist the parties in returning to the pattern of successfully concluding collective bargaining without third party assistance that they had enjoyed for some time.

*"Rob Allan"*

Rob Allan  
Union Nominee

## **APPENDIX A**

1. Article 16.02 – Shift Cycle Optimization
2. Article 16.04 (e) – Shift Schedule Short Changes
3. Article 16.05 – Shift Changes
4. Article 16.08 & LOU 2011-05 – Hours of Work for Non-Operating Employees
5. Article 24.08 – Sick Leave Payout for Rehires
6. Article 26.02 – Bereavement Leave
7. Article 26.08 – Court Leave With Pay
8. Article 31.03 – Calculation of Seniority for Ab-Initios
9. Article 32.01 & Article 32.07 – Principles Applicable to Staffing Provisions
10. Article 32.05 – Priority Placement
11. Article 32.06 – Seniority Bid and Transfer Down Eligibility and Salary on reassignment after a Transfer Down
12. Article 32.12 – Procedures in the Event of a Delay
13. Article 33.05 – Position Exchange Provision
14. Appendix E – List of Arbitrators
15. Appendix G – Modified Hours of Work Trial
16. LOU 2011-01 – Travel and Relocation Expenses
17. LOU 2011-02 – Weekend Worker Trial
18. LOU 2011-04 – Advisory Committee for Enhancement of Shift Schedules
19. LOU 2011-07 – Staffing of Operating UPS Positions – National Trial
20. LOU 2013-XX – Emergency Leave Donation
21. Letter from Larry Lachance to Greg Myles RE: Employment Security
22. Letter from Elizabeth Cameron to Greg Myles RE: Currency Training

23. Letter from Trevor Johnson to Greg Myles RE: Refresher Training
24. Letter from Trevor Johnson to Greg Myles RE: Working Alone
25. Letter from Elizabeth Cameron to Greg Myles RE: Organizational change
26. Letter from Greg Myles to Elizabeth Cameron RE: Deferred Sick leave payout