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*Federal Public Sector  
Labour Relations and  
Employment Board Act and  
Federal Public Sector  
Labour Relations Act*



Before a panel of the  
Federal Public Sector  
Labour Relations and  
Employment Board

BETWEEN

**CANADIAN FEDERAL PILOTS ASSOCIATION**

Bargaining Agent

and

**TREASURY BOARD  
(Department of Transport)**

Employer

Indexed as

*Canadian Federal Pilots Association v. Treasury Board (Department of Transport)*

In the matter of a policy grievance referred to adjudication

**Before:** Bryan R. Gray, a panel of the Federal Public Sector Labour Relations  
and Employment Board

**For the Bargaining Agent:** Jennifer Duff, counsel

**For the Employer:** Chris Hutchison, counsel

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Decided on the basis of written submissions,  
filed October 13 and 27 and November 8, 2023, and May 3 and 17, 2024,  
and via videoconference,  
April 11, 2024.



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## REASONS FOR DECISION

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### I. Summary

[1] The Canadian Federal Pilots Association (“the Association” or CFPA) carried the burden of proof in this policy grievance to bring clear and compelling evidence to substantiate its allegation of a violation of the collective agreement between the Treasury Board and the Association for the Aircraft Operations Group that expired on January 25, 2015 (“the collective agreement”).

[2] The collective agreement requires the mutual agreement of the parties for any amendments made to it. The CFPA argues that an amendment that was made to the Operations Manual amounts to a change to the collective agreement and is a violation of the mutual agreement clause.

[3] The CFPA asks the Federal Public Sector Labour Relations and Employment Board (“the Board”) to find that the collective agreement requires that all civil aviation inspectors (CAIs) (who are required to maintain their pilot certification and are subject to annual pilot proficiency checks (PPCs)) be assessed against the higher pilot-in-command (PIC) standard rather than the recently introduced and lower second-in-command (SIC) or co-pilot standard, which was introduced in 2018 by means of a Transport Canada (“the employer” or TC) “Operations Manual” amendment. Such a declaration would trigger collective agreement provisions requiring the mutual agreement of the Association to make such a change.

[4] The submission that the PPC must be carried out at a PIC proficiency level rather than the SIC level is not in the text of the collective agreement, nor is it incorporated by reference. Rather, this request would require the Board to read-in additional language to the article at issue, thus amounting to a change to the agreement. Such an outcome is strictly prohibited by the *Federal Public Sector Labour Relations Act* (S.C. 2003, c. 22, s. 2; “the Act”). Therefore, the grievance is denied.

### II. Background

[5] The employer provided the following background information, with footnoted sources, including statements made by a witness, Steve Buckles, Director, Flight Operations, Aircraft Services Directorate (ASD), TC. Any portions of this information that were contested and that are of some probative value to the outcome of this matter



will be noted. The parties were offered and declined an opportunity for the Board to convene oral cross-examinations of the witnesses who were quoted in the statements of fact in the written submissions.

[6] The ASD is an air carrier authorized under the *Canadian Aviation Regulations* (SOR/96-433; CARs) and is approved to operate aircraft from different locations in Canada.

[7] As an approved air carrier, the ASD is required to have the Operations Manual containing operations directives, information, and instructions for pilots to follow, as well as emergency procedures and detailed training and checking programs for each aircraft type. The manual is reviewed and approved by the TC's Civil Aviation Directorate regulatory authority.

[8] From time to time, amendments to the Operations Manual are required, to reflect changing or new operations and training programs. These amendments are submitted to the Civil Aviation Directorate for approval before being implemented, and the ASD is responsible for ensuring that the instructions, procedures, and processes in the Manual are followed.

[9] Amendments to the approved Operations Manual are driven by factors such as evolving regulations, standards and guidelines, new equipment, or changes to training and checking programs. Small amendments or critically important information that will be incorporated in the Operations Manual is initially promulgated through an operations bulletin.

[10] When appropriate, they will be incorporated into the Operations Manual as part of a larger amendment process. This allows for critical information or changes to procedures to be issued to pilots in a timely manner. A bulletin has the same authority as the Manual.

[11] A change to the applicable *Flight Test Guide TP 14727* in 2017 introduced revised checking standards for PIC and SIC standards. Essentially, the change allowed a candidate being assessed as a SIC additional minor errors during what is termed a "checkride", as compared to a candidate being assessed for a PIC standard.

[12] The PIC and SIC designations determine the final decision-making authority during flight operations. The terms "Captain" and "First Officer", or "pilot" and "co-

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*Federal Public Sector Labour Relations and Employment Board Act and  
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pilot”, are interchangeable with PIC and SIC. They work together to safely operate the aircraft; however, the Captain or PIC has final authority as to the conduct of the flight. Before 2017, there had been no allowance for checking standards specific to the PIC and SIC designations.

[13] Given the type of operations conducted by the ASD, it was determined that incorporating the change into its checking program was appropriate. An Operations Manual amendment was submitted to the Civil Aviation Directorate, which was approved, and subsequently, an operations bulletin advising pilots of this change was issued.

[14] CAIs are required to maintain their pilot qualifications as part of their occupational certification. This means that they must maintain an Airline Transport Pilot Licence (ATPL), a valid instrument rating, and a pilot medical. The Professional Aviation Currency Program (PACP) was incorporated by reference into the collective agreement in 2007 as the policy guiding how this is accomplished.

[15] CAIs are assigned to a program through the PACP. The PACP outlines a number of programs that a CAI can be assigned to, ranging from light aircraft at flying clubs, simulator and classroom training from a commercial supplier, large commercial airline operations, and programs offered by the ASD.

[16] These programs involve annual classroom training, simulator training, and, in some cases, flight training. When required, a checkride, or PPC, is conducted by a qualified check pilot to assess candidates against the established regulatory standards.

[17] The programs provided by the ASD are specific to the two airplane types and two helicopter types in the fleet. The training is intended to qualify a CAI to safely operate ASD aircraft. Because CAIs fly very few hours annually, the training provided by the ASD on TC aircraft is well in excess of what would be provided to pilots flying similar aircraft in commercial operations.

[18] Because ASD bases are often not co-located with TC Civil Aviation offices, a number of CAIs are assigned to alternate programs with local providers. Others travel to Ottawa, Ontario, to follow an ASD-provided program.

[19] The PIC or SIC qualification for those not following an ASD program is based on their assignment as described in the PACP and is not influenced by ASD policy or the *Federal Public Sector Labour Relations and Employment Board Act* and *Federal Public Sector Labour Relations Act*

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Operations Manual. All pilots assigned to an ASD program take the same classroom training program. There is no distinction in the training between PIC and SIC.

[20] For the purposes of services provided to the Civil Aviation Directorate, the ASD operates two types of airplanes, the Citation C550 and King Air C90A, as well as two types of helicopters. The airplanes are always operated by two pilots. The helicopters are operated by a single pilot, who must achieve a PIC qualification.

#### **A. The grievance**

[21] The grievance states that on August 16, 2018, it was advised by email from a member that the employer, the ASD, had obtained authorization from the regulator to change its Operations Manual to allow conducting PPCs to a lower standard, the SIC or First Officer standard. The email also indicated that several members had recently been subjected to a PPC carried out to that lower standard.

[22] A copy of the document implementing the change, dated July 24, 2018, was attached to the email. Previously, the ASD Operations Manual had provided only for the conduct of a PPC to the higher PIC or Captain standard.

[23] The CFPA was not involved in any consultations with the employer on this matter. More recently, the CFPA was advised that the majority of its members who are assigned to a PACP conducted by the ASD are now being provided only a SIC proficiency check when the practice and provisions before July 24, 2018, were to conduct a PIC (Captain) proficiency check annually.

[24] Article 47 of the collective agreement supports the Treasury Board's minimum qualification standards applicable to CFPA members and makes provision for a PACP to be provided to every employee in accordance with a program established between the Association and the employer.

[25] Clause 47.04 of the collective agreement requires the employer to assign each employee to a PACP, in accordance with the criteria and procedures established between it and the Association. Clause 47.05 establishes that all changes to the program must be carried out by mutual agreement between the parties.



[26] The employer gave notice to bargain for the collective agreement on September 25, 2014. The CFPA has been in negotiations with the employer since that time, and they have yet to conclude a new collective agreement.

[27] Article 47 is open for negotiation, and proposals have been tabled. The existing PACP applicable to employees at TC does not provide for a PPC to the lower SIC standard.

[28] The CFAP submitted that conducting proficiency checks on CFPA members assigned to a PACP with the ASD, when the check is done to the lesser SIC (first officer) standard, is a change to the practice from what existed on the date that notice to bargain was given. Additionally, this change was implemented without the CFPA's agreement, which the CFPS submits is in violation of article 47 of the agreement.

[29] For greater certainty, the Board notes that the CFPA did not pursue the matter of an alleged violation of the statutory freeze provision of the *Act* in this matter, despite it being mentioned in the previously noted written submission.

## **B. The collective agreement**

[30] Despite the CFPA's references to other matters in its submissions, the grievance document is focused solely upon article 47 of the collective agreement, which reads as follows:

### **ARTICLE 47**

#### **PROFESSIONAL AVIATION CURRENCY**

**47.01** *The parties agree that the maintenance of Professional Aviation Currency is necessary for the Employer to fulfil its mandate and for employees to carry out their duties.*

**47.02** *The Employer shall provide each medically fit Civil Aviation Inspector (CAI) with the opportunity to maintain his/her Professional Aviation Currency through the use of Departmental aircraft or an*

### **ARTICLE 47**

#### **MAINTIEN DE LA COMPÉTENCE PROFESSIONNELLE EN AVIATION**

**47.01** *Les parties conviennent que le maintien de la compétence professionnelle en aviation est nécessaire pour permettre non seulement à l'Employeur de remplir son mandat, mais aussi aux employés d'exercer leurs fonctions.*

**47.02** *L'Employeur fournit à chaque CAI jugé médicalement apte l'occasion de maintenir sa compétence professionnelle en aviation en participant au programme de maintien de la compétence professionnelle du*



*approved alternate professional currency program.*

*Ministère ou à un programme parallèle approuvé par celui-ci.*

**47.03** *Professional Aviation Currency is deemed to have been met as a minimum, by the possession and maintenance of the Airline Transport Pilot Licence (ATPL) and Group 1 or Group 4 Instrument Rating/Pilot Proficiency Check or a Commercial Helicopter Pilot Licence and Group 4 Instrument Rating/Pilot Proficiency Check.*

**47.03** *Les exigences minimales à satisfaire pour maintenir la compétence professionnelle en aviation sont la possession d'une licence de pilote de ligne et d'une qualification de vol aux instruments du groupe 1 ou du groupe 4/contrôle de la compétence du pilote, ou d'une licence de pilote d'hélicoptère commercial et d'une qualification de vol aux instruments du groupe 4/contrôle de la compétence du pilote.*

**47.04** *The Employer shall assign each employee in accordance with the criteria and procedures established between the Employer and the Union to a Professional Aviation Currency Program.*

**47.04** *L'Employeur affecte chaque employé, conformément aux critères et procédures établis par l'Employeur et le Syndicat, à un programme de maintien de la compétence professionnelle en aviation.*

**47.05** *With the exception of clause 47.04 above all changes to the Transport Canada Professional Aviation Currency Policy for Civil Aviation Inspectors and the TSB policy on CAI Professional Aviation Currency shall be accomplished by means of mutual agreement between the parties.*

**47.05** *À l'exception du paragraphe 47.04 qui précède, la politique de Transports Canada sur le maintien de la compétence professionnelle des inspecteurs de l'aviation civile et la politique du BST sur l'actualisation des compétences professionnelles en aviation des CAI ne peuvent être modifiées que par consentement mutuel des parties.*

### III. The Association's submissions

[31] While the grievance alleges a failure to consult and a failure to secure the Association's mutual agreement for the impugned change to the Operations Manual, the Association's case rests upon a contested interpretation of clause 47.03 of the collective agreement, referencing "Professional Aviation Currency", which it asserts is not defined in the collective agreement, but it submits that it is defined in the CARs.

[32] The Association relies upon a statement by Justin Miller, Technical Team Lead, Flight Operations for the employer, who asserts that the CARs require the PPC to be



conducted annually to the PIC standard and that therefore, the recently introduced SIC standard is in contravention of the CARs and in turn the collective agreement.

[33] The Association acknowledged the essence of this grievance as one of collective agreement interpretation by implied argument in its written submissions on this point, which state the following:

...

*28. PPC standards are not directly referenced in the Collective Agreement because prior to July 24, 2018 only one standard existed—the PIC standard. Prior to the recent change that is the subject of this policy grievance, the only qualification provided for in the TC ASD Operations Manual was training to a PIC standard.*

*29. In other words, when the CFPA negotiated the provisions and details of the PAC Program, the possibility of a PPC being conducted to a SIC standard did not exist. All approved PAC programs included the completion of a PPC and Instrument Rating flight test to the PIC standard.*

...

[34] When it addressed that the SIC standard did not previously exist, the CFPA stated that it is not necessary to explicitly mention the PPC standard in the PACP to incorporate it into the collective agreement. Arbitrators have held that changes to the methodology of how a term of a collective agreement is carried out is also a term of the collective agreement, and thus, it cannot be altered without mutual consent.

[35] In *Loomis Armored Car Service Ltd. v. C.A.W., Local 4266A*, 1996 CarswellNat 3008, the grievor refused to submit to a polygraph test, which was not explicitly referenced in the collective agreement or in the “Employees Rule Book” (which was incorporated into that agreement). Nonetheless, the arbitrator ruled that while the rule book did not refer to the polygraph tests, it did call upon employees to cooperate in accounting for goods entrusted to their care.

[36] As a result, there was an expectation and acknowledgement that employees would submit to the test. The polygraph tests were an express, or at the very least, implied, term of the collective agreement. Similarly, while the PACP does not expressly refer to the methodology involved in conducting the PPCs, it does refer to maintaining currency and the ATPL. These references necessarily include the expectation and acknowledgement that employees will submit to PPC tests in accordance with the



ATPL's requirements and that the employer will provide the necessary training and administration of the appropriate test.

[37] Additionally, the Canada Industrial Relations Board (CIRB) has stated that unilateral changes to internal policies that impact the rights and privileges outlined in a collective agreement in the context of a different collective agreement cannot be made. In *Ottawa Macdonald-Cartier International Airport Authority v. Ottawa Airport Professional Aviation Fire Fighters Association Local 3659 International Association of Fire Fighters*, 2019 CanLII 91808 (CA LA) ("*Ottawa MacDonald Cartier*"), TC introduced a new operations model through its internal directives, which had a significant impact on how overtime was assigned and changed the category of workers from Category 8 to Category 7. The collective agreement in question stated that if the category of workers changed, then the parties would agree to consult, to make any necessary changes to the assignment of overtime work.

[38] The CIRB found that the employer's operational model violated the collective agreement. The changes were made without the union's consent. While the changes were within the employer's internal regulations, the union also had an existing agreement with rights that were protected from such unilateral changes.

[39] While *Ottawa MacDonald Cartier* involved a different union and tribunal, the methods employed by TC remain the same — an attempt to alter the collective agreement's terms without the consent of the union, in this case the Association. Similar to *Ottawa MacDonald Cartier*, the CFPA does not consent to the changes that the employer is attempting to make to the PACP. While the employer is permitted to make changes to its internal directives, in this case, the changes have a direct impact on the rights protected by the agreement. As such, these changes are inappropriate.

[40] The employer's failure to enforce its own qualification to hold a valid ATPL is also a violation of the collective agreement. In *Canada Post Corp. v. APOC (Uniforms)*, 2016 CarswellNat 4312, the arbitrator ruled that when a company's rules are in a collective agreement between the parties, management is not entitled to alter or amend, or ignore the violations. The union argued that the employer failed to enforce a collective agreement provision — wearing the required uniforms at work.

[41] The arbitrator drew a distinction between rules that are unilaterally imposed by an employer versus rules that were negotiated between the parties and incorporated



into the collective agreement. The following evidence indicated that the uniform policy was a part of the collective agreement:

- 1) it was specifically negotiated in the collective agreement; and
- 2) the policy indicated that it was compulsory.

[42] Similarly, the CFPA submits that the agreement requires that its members hold, at minimum, an ATPL. This was specifically negotiated in the agreement. The ASD has indicated that it will not enforce or discipline its members for falling below this requirement due to employer-imposed changes to the PPC. However, as discussed in *Canada Post Corp.*, the employer does not have the discretion to ignore an agreement provision due to an internal policy. It is not within the employer's prerogative to pick and choose which elements of the collective agreement to enforce.

[43] The Association also noted jurisprudence and scholarly sources related to long-standing established practice and interpretation conventions for ambiguous language and extrinsic evidence. It also argued that the employer cannot unilaterally alter job qualifications. It stated that what does indeed fall within the employer's purview is setting out the qualifications of the job that CAIs must complete. It has always held that holding and maintaining an ATPL is a precondition of employment for CAIs. Accordingly, passing the PPC at a PIC standard is a precondition of employment.

#### **A. The Association's supplemental submission on the CARs**

[44] The CARs inform all pilots — CFPA members included — on how to maintain an ATPL. To exercise the privileges of an ATPL, the CARs require pilots to conduct a PPC. A PPC is a qualifying flight test of the competency and skills of a commercial pilot in relation to the rules, procedures, and handling of an aircraft. The CARs require the PPC to be completed annually to the PIC standard. Pilots are required to meet this threshold to maintain currency for their ATPL.

[45] In short, a failure to conduct a PPC to the PIC standard is a failure to maintain the ATPL. As a result, any changes made to the PPC threshold directly impact a pilot's ability to exercise the privileges of the ATPL, as required by the PACP.

[46] The Treasury Board's "Qualification Standards" require CAIs to hold and maintain a valid Canadian ATPL with a Group 1 instrument rating. To be clear, both holding the licence and its maintenance are required.



[47] Pilot licensing in Canada is a staged process. Beginning with a private pilot licence (PPL), the standards for each level of piloting are comprehensively set out in *Standard 421 - Flight Crew Permits, Licences and Ratings* of the CARs.

[48] Standard 421 is incorporated by reference into the CARs through s. 401.01, which states, “Any reference in this Subpart to the personnel licensing standards is a reference to the *Personnel Licensing and Training Standards respecting Flight Crew Permits, Licences and Ratings*.”

[49] Because Standard 421 is incorporated by reference into the CARs, it has the same authority as the CARs. (See *Guido Lepore v. Canada (Minister of Transport)*, 2019 TATCE 43 at para. 8.)

[50] A commercial pilot licence (CPL) is the first level of piloting that allows for employment as a pilot. It entitles the holder to operate as a PIC of a single-pilot aircraft or as the co-pilot of a multi-crew aircraft while engaged in providing a commercial air service. Some of the minimum requirements to obtain the CPL include the following (see the CARs, Division VII, and *Standard 421.30*):

- 200 hours of total flight experience;
- 100 hours of PIC experience;
- 65 hours of additional flight training beyond the PPL level;
- a minimum of 80 hours of commercial pilot ground school;
- the successful completion of TC’s “Commercial Pilot Written Exam” with a grade of 60% or better; and
- the successful completion of a commercial pilot flight test.

[51] The ATPL is the highest level of aircraft pilot licence that an individual can achieve. It entitles the holder to operate as a PIC of any multi-crew aircraft while engaged in providing a commercial air service. Due to the requirements, it often takes years of commercial flying experience before a pilot can meet the requirements of an ATPL. Some of the minimum requirements to obtain the ATPL include the following (see the CARs, Division VIII, and *Standard 421.34*):

- 1500 hours of total flight experience;
- 250 hours of PIC experience;
- a grade of 70% or better on two ATPL written exams (called SAMRA and SARON); and
- an instrument rating for a multi-engine airplane.



[52] As the ATPL entitles the holder to additional privileges only while they are engaged in providing a commercial air service, it is clear that the intent of requiring CAIs to hold and maintain such a licence is that they meet the requirements governing commercial air services so that they can provide effective oversight of Canadian commercial air operators.

[53] Parts IV and VII of the CARs detail a number of recency requirements that a pilot must maintain to exercise the privileges of their licence. To hold and maintain a valid Canadian ATPL, the CARs are clear that no holder of a flight crew permit, licence, or rating (meaning, in this case, an ATPL) shall exercise the privileges of that licence unless the following is true:

...	[...]
<b>401.05 (1) ... (a) the holder has acted as pilot-in-command or co-pilot of an aircraft within the five years preceding the flight; or</b>	<b>401.05 (1) [...] a) il a agi en qualité de commandant de bord ou de copilote d'un aéronef dans les cinq années qui précèdent le vol;</b>
<b>(b) within the 12 months preceding the flight</b>	<b>b) dans les 12 mois qui précèdent le vol :</b>
<b>(i) the holder has completed a flight review, in accordance with the personnel licensing standards, conducted by the holder of a flight instructor rating for the same category of aircraft,</b>	<b>(i) il a terminé une révision en vol, conformément aux normes de délivrance des licences du personnel, dispensée par le titulaire d'une qualification d'instructeur de vol pour la même catégorie d'aéronef,</b>
<b>(ii) the flight instructor who conducted the flight review has certified in the holder's personal log that the holder meets the skill requirements for the issuance of the permit or licence set out in the personnel licensing standards, and</b>	<b>(ii) l'instructeur de vol qui a dispensé la révision en vol a attesté dans le carnet personnel du titulaire que ce dernier a les habiletés exigées pour que lui soit délivré un permis ou une licence précisé dans les normes de délivrance des licences du personnel,</b>
<b>(iii) the holder has successfully completed the appropriate examination specified in the personnel licensing standards.</b>	<b>(iii) le titulaire a réussi l'examen applicable précisé dans les normes de délivrance des licences du personnel.</b>
...	[...]

[Emphasis added]



[54] In addition, as the ATPL grants the holder privileges only while engaged in a commercial air service, the holder must have done the following (see the CARs, s. 705.106):

- (a) within the previous 90 days,
  - (i) completed three takeoffs and landings as the pilot at the controls, and one sector,
  - (ii) completed five sectors, or
  - (iii) fulfilled the training requirements set out in the *Commercial Air Service Standards*,
- (b) successfully completed a PPC, the validity of which has not expired;
- (c) successfully completed a line check or line indoctrination training; and
- (d) fulfilled the requirements of the air operator's training program.

[55] Similarly, the CARs, at s. 401.03, state the following:

<b>401.03 (1)</b> ... no person shall act as a flight crew member or exercise the privileges of a flight crew permit, licence or rating unless	<b>401.03 (1)</b> [...] il est interdit à toute personne d'agir en qualité de membre d'équipage de conduite ou d'exercer les avantages d'un permis, d'une licence ou d'une qualification de membre d'équipage de conduite à moins que les conditions suivantes ne soient respectées :
<b>(a)</b> the person holds the appropriate permit, licence or rating;	<b>a)</b> la personne est titulaire du permis, de la licence ou de la qualification pertinents;
<b>(b)</b> the permit, licence or rating is valid;	<b>b)</b> le permis, la licence ou la qualification est valide;
<b>(c)</b> the person holds the appropriate medical certificate; and	<b>c)</b> la personne est titulaire du certificat médical pertinent;
<b>(d)</b> the person can produce the permit, licence or rating, and the certificate, when exercising those privileges.	<b>d)</b> la personne est en mesure de produire le permis, la licence ou la qualification et le certificat lorsqu'elle en exerce les avantages.

...

[...]

[56] These requirements are echoed in the CARs in ss. 702.65, 703.88, 704.108, and 705.106. (See CARs s. 401.03.)

[57] A "flight crew member" is defined in the CARs at s. 101.01 (the definitions section) as a crew member assigned to act as a pilot or flight engineer of an aircraft during flight time.



[58] In other words, an ATPL is maintained, and its privileges are exercisable, only if the pilot meets the requirements of Parts IV and VII of the CARs. This means that the holder has either acted as a PIC or co-pilot of an actual aircraft within the last five years and has successfully completed an air operator's training program, including a PIC PPC, to meet the level required to obtain the ATPL in the first place.

[59] It is without question that the SIC or co-pilot threshold does not qualify CFPA members for their ATPL. The CARs require the PPC to be completed to the PIC standard for the holder to act as a PIC.

[60] The employer alleges that the CFPA has ignored the possibility of maintaining one's ATPL by meeting the requirements of the CARs, s. 401.05(a). While it is true that a CAI who acts as a PIC or co-pilot of an aircraft within five years would meet the requirements, the reality is that as a result of years of cutbacks to resources and the availability of required training for CAIs, very few CAIs maintain their ATPL by flying departmental aircraft.

[61] The importance and relevance of the CARs to the Association's policy grievance cannot be overstated. The requirements set out in them are inextricably linked to the employer's decision to conduct PPCs to the lower, SIC standard, contrary to then-article 47 of the collective agreement and the PACP.

[62] As has been demonstrated, a failure to conduct a PPC to the PIC standard is a failure to maintain the ATPL. As a result, any changes made to the PPC threshold impact a pilot's ability to exercise the privileges of the ATPL, as required by the PACP.

[63] The Association requests the following remedial order:

...

*a. All CFPA members who have been subjected to the lower, SIC standard be recalled as soon as possible in order to:*

*i. Be provided the necessary training to meet the PIC standard;  
and*

*ii. Required to successfully complete a PPC to the PIC standard;*

*b. ASD be required to issue a new Operations Bulletin, without delay, clarifying that the new SIC provisions do not apply to any pilots subject to a PACP conducted by ASD;*



*c. TC distribute the new Operations Bulletin (clarifying the applicability of the new SIC provisions) to all Civil Aviation Managers and CFPA members; and*

*d. All CFPA members be subjected to a PPC at ASD as part of their PACP, be trained and qualified to the PIC standard, until such time as TC and the CFPA agree to another standard.*

#### **IV. The employer's submissions**

[64] The employer asserts that this grievance as originally submitted, is focused solely upon whether it breached clause 47.05 of the collective agreement, which requires the mutual agreement of the parties for changes to the agreement. It submits that no such changes have occurred and that therefore, the grievance must fail.

[65] The employer also argues that the Board has no jurisdiction to consider amendments to the Operations Manual. As a statutory tribunal, the Board must find its jurisdiction within the applicable Act and collective agreement provisions. There is no inherent jurisdiction and under the Act; only certain matters are open to grieving, and only certain grievances may be referred to the Board for adjudication. There is no freestanding authority to adjudicate matters independent of a specific allegation of a collective agreement breach. It notes s. 220(1) of the Act to support this submission, which reads as follows:

*220 (1) If the employer and a bargaining agent are bound by an arbitral award or have entered into a collective agreement, either of them may present a policy grievance to the other in respect of the interpretation or application of the collective agreement or arbitral award as it relates to either of them or to the bargaining unit generally.*

*220 (1) Si l'employeur et l'agent négociateur sont liés par une convention collective ou une décision arbitrale, l'un peut présenter à l'autre un grief de principe portant sur l'interprétation ou l'application d'une disposition de la convention ou de la décision relativement à l'un ou l'autre ou à l'unité de négociation de façon générale.*

[66] The employer also argues that there is no mention of the Operations Manual in clause 47.05 of the collective agreement. Nor is there any such requirement in the collective agreement that it be amended only by mutual agreement. The CFPA knew of the Operations Manual when it entered into the collective agreement. Parties to a collective agreement are assumed to have meant what they said. Had the parties



intended clause 47.05 to require mutual agreement as to changes to the Operations Manual, they would have said so in the collective agreement.

[67] In addition to the absence of any reference in the collective agreement to the need for mutual agreement to make changes to the Operations Manual, clause 9.01 expressly provides the employer with all "... functions, rights, powers and authority which the Employer has not specifically abridged, delegated or modified ..." by the agreement. If the CFPA wishes to have control over amendments to the Operations Manual, it is an issue for the bargaining table and not for a policy grievance.

[68] The employer submitted that contrary to the CFPA's written submissions, no changes to the PACP occurred; nor does the collective agreement require any resultant effect on the PACP or program to be made by mutual agreement. The CFPA asks the Board to read-in to the collective agreement language that is not there and that does not flow from the plain meaning of the words chosen by the parties.

[69] The CFPA argues that the introduction of the SIC standard created an ambiguity about the question of currency, which thus somehow opened the door for the CFPA to rely on extrinsic evidence of the parties' intentions. It should be noted that the CFPA does not raise this alleged ambiguity in its policy grievance, which alleges only that the SIC standard's introduction was implemented without the CFPA's agreement, in violation of article 47 of the collective agreement. Furthermore, there is no ambiguity in the agreement's wording, and the question of defining "currency" is not relevant to determining whether the employer breached clause 47.05 when it amended the Operations Manual.

#### **A. The employer's supplemental submission on the CARs**

[70] The Board invited the parties to make submissions on whether or not the CARs require a PPC to be completed annually and to the PIC standard. They do not.

[71] Further, it must be recalled that the basis for this grievance is that the CFPA alleges that the employer breached clause 47.05 of the collective agreement, which applies to all employees in the Aircraft Operations bargaining unit. Whether or not the CARs require a PPC to be completed to the PIC standard annually is not determinative of the CFPA's allegation that the employer unilaterally amended the PACP for CAIs.



[72] The employer concurs with the CFPA's statement that pilot licensing in Canada is a staged process, as well as the sequencing set out from paragraphs 5 to 7 of the CFPA's supplementary submissions, which culminates with the ATPL.

[73] Where the parties' positions diverge is when the CFPA argues that the CARs require that the PPC be completed annually to the PIC standard for a licensee to maintain their ATPL. While pilots are required to accrue PIC experience to qualify for an ATPL, there is no requirement in the CARs that they complete a PPC to the PIC standard as part of the licence application or annually to maintain their ATPL.

[74] Section 401.05 of the CARs establishes the recency requirements applicable to holders of a "flight crew permit, licence or rating", as follows:

**401.05 (1)** *Despite any other provision of this Subpart, no holder of a flight crew permit, licence or rating, other than the holder of a flight engineer licence, shall exercise the privileges of the permit, licence or rating unless*

**(a)** *the holder has acted as pilot-in-command or co-pilot of an aircraft within the five years preceding the flight; or*

**(b)** *within the 12 months preceding the flight*

**(i)** *the holder has completed a flight review, in accordance with the personnel licensing standards, conducted by the holder of a flight instructor rating for the same category of aircraft,*

**(ii)** *the flight instructor who conducted the flight review has certified in the holder's personal log that the holder meets the skill requirements for the issuance of the permit or licence set out in the personnel licensing standards, and*

**401.05 (1)** *Malgré toute disposition contraire de la présente sous-partie, il est interdit au titulaire d'un permis, d'une licence ou d'une qualification de membre d'équipage de conduite, autre qu'un titulaire de licence de mécanicien navigant, d'exercer les avantages du permis, de la licence ou de la qualification à moins qu'il ne satisfasse à l'une ou l'autre des conditions suivantes :*

**a)** *il a agi en qualité de commandant de bord ou de copilote d'un aéronef dans les cinq années qui précèdent le vol;*

**b)** *dans les 12 mois qui précèdent le vol :*

**(i)** *il a terminé une révision en vol, conformément aux normes de délivrance des licences du personnel, dispensée par le titulaire d'une qualification d'instructeur de vol pour la même catégorie d'aéronef,*

**(ii)** *l'instructeur de vol qui a dispensé la révision en vol a attesté dans le carnet personnel du titulaire que ce dernier a les habiletés exigées pour que lui soit délivré un permis ou une licence précisé dans les*



	<i>normes de délivrance des licences du personnel,</i>
<i>(iii) the holder has successfully completed the appropriate examination specified in the personnel licensing standards.</i>	<i>(iii) le titulaire a réussi l'examen applicable précisé dans les normes de délivrance des licences du personnel.</i>
...	[...]

[75] Section 401.05(1)(a) of the CARs contemplates the possibility of satisfying the recency requirements of an ATPL by acting as a co-pilot (or SIC) of an aircraft within the last five years. This section disproves the CFPA's claim that the CARs require licensees to complete a PPC to the PIC standard annually, to maintain an ATPL.

[76] The employer noted that at paragraph 15 of its supplementary submissions, the CFPA acknowledges that CAIs who act as a PIC or co-pilot of an aircraft within five years meet the requirements of an ATPL without completing a PPC to the PIC standard.

[77] Even if there were sufficient evidence before the Board to allow it to disregard s. 401.05(1)(a) of the CARs, an exemption has been granted to holders of a Canadian pilot permit or license who have not acted as a PIC or co-pilot of an aircraft within the preceding five years. It allows holders the option of completing a pilot training program "... approved in accordance with the relevant Subpart of Part VII of the CARs, in a Level C or D full-flight simulator approved pursuant to section 606.03 of the CARs." (See — NCR-047-2021: Exemption from paragraph 401.05(1)(a) of the CARs.)

[78] The pilot training programs contemplated by this exemption do not require licensees to complete a PPC to the PIC standard.

[79] The CFPA cites ss. 401.03 and 05 of the CARs as the sole authorities for the statement that the PIC PPC is required to qualify for the ATPL. However, neither of those sections contains any language requiring a PPC to be completed to a PIC standard as a precondition to maintaining an ATPL.

[80] Section 401.05 of the CARs speaks to recency requirements, but it specifically contemplates pilots with a SIC PPC or co-pilot designation exercising the privileges of their licence, as follows:

***Recency Requirements***

***Mise à jour des connaissances***



**401.05 (1)** *Despite any other provision of this Subpart, no holder of a flight crew permit, licence or rating, other than the holder of a flight engineer licence, shall exercise the privileges of the permit, licence or rating unless*

**401.05 (1)** *Malgré toute disposition contraire de la présente sous-partie, il est interdit au titulaire d'un permis, d'une licence ou d'une qualification de membre d'équipage de conduite, autre qu'un titulaire de licence de mécanicien navigant, d'exercer les avantages du permis, de la licence ou de la qualification à moins qu'il ne satisfasse à l'une ou l'autre des conditions suivantes :*

**(a)** *the holder has acted as pilot-in-command or co-pilot of an aircraft within the five years preceding the flight ....*

**a)** *il a agi en qualité de commandant de bord ou de copilote d'un aéronef dans les cinq années qui précèdent le vol [...]*

[Emphasis added]

[81] The CFPA continues to make unequivocal statements like the one at paragraph 14 of its supplementary submissions that it is "... without question that the Second-In-Command (SIC or co-pilot) threshold does not qualify CFPA members for their ATPL." Yet, it still has not pointed to which section of the CARs requires the holder of an ATPL to complete a PPC to the PIC standard annually.

[82] The CFPA quotes s. 401.05(1)(b) of the CARs and emphasizes the fact that within a 12-month period, the holder of a license has "... completed a flight review, in accordance with the personnel licensing standards ..." and that "... the holder meets the skill requirements for the issuance of the permit or licence set out in the personnel licensing standards ...". However, the CFPA does not point to any personnel licensing standards that require the holder of an ATPL to complete a PPC to the PIC standard.

[83] And finally, the CFPA cites ss. 401.03, 702.65, 703.88, 704.108, and 705.106 of the CARs for the authority that licensees must hold and maintain their licences to exercise the privileges of their licences. Nothing in those sections supports the notion that a holder of an ATPL must complete a PPC to the PIC standard annually.

## V. Reasons

[84] I turn first to the alleged breach of article 47.03. The requirement for pilot proficiency to be assessed to the PIC standard is not in the collective agreement. Contrary to the Association's submissions, it is also not in the CARs. Despite counsel's



well-prepared arguments, it is not necessary to pursue schools of contract interpretation to deal with ambiguity, as there is no ambiguity.

[85] A PIC proficiency standard is not required to maintain the ATPL, and the Board's role is not to create such a standard in the collective agreement. Such is prohibited by s. 229 of the *Act*.

[86] My conclusion on this point is supported by a plain and obvious reading of s. 401.05(1)(a) of the CARs, which states that the holder of an ATPL is required to act as the pilot-in-command *or* the co-pilot within the preceding 5 years. The employer has drawn attention to this concession made in the submissions of the CFPA.

[87] I also conclude that the evidence before me does not support a finding of a breach of article 47.05, which requires (with the exception of clause 47.04) that all changes to the Transport Canada Professional Aviation Currency Policy for Civil Aviation Inspectors and the TSB policy on CAI Professional Aviation Currency be accomplished by means of mutual agreement between the parties.

[88] As submitted by the employer, the text at issue in this matter is contained in the Operations Manual. I find that the Operations Manual was not incorporated, in whole, into the collective agreement. I note, on this point, that the collective agreement does reference the Operations Manual in article 18 (hours of work), thereby showing, as argued by the employer, that if the parties had intended for it also to be incorporated into 47.05 they would have said so in the text of that section of the agreement.

[89] For these reasons, I find that the Association has not established clear and compelling evidence upon which I can conclude that on a balance of probabilities, a violation of the collective agreement has occurred. As such, the grievance is denied.

[90] For all of the above reasons, the Board makes the following order:

*(The Order appears on the next page)*



**VI. Order**

[91] The grievance is denied.

November 14, 2024.

**Bryan R. Gray,  
a panel of the Federal Public Sector  
Labour Relations and Employment Board**