File: 585-02-51176

IN THE MATTER OF
THE *FEDERAL PUBLIC SECTOR LABOUR RELATIONS ACT*
and a Request for Arbitration affecting
the Canadian air traffic control association Unifor local 5454, as Bargaining Agent,
and the Treasury Board, as Employer,
in respect of the bargaining unit composed of the Air Traffic Control Group

Before: Allen Ponak, Chairperson,
Luc Presseau, Treasury Board nominee,
Gordon Howe, Bargaining Agent nominee

For the Bargaining Agent: Jennifer Duff

For the Employer: Daniel Asselin

Heard in Ottawa, June 24 and 25, 2025.

[1] The Treasury Board and CATCA are parties to a collective agreement ("CBA") that falls under the *Federal Public Sector Labour Relations Act ("FPSLRA" or "Act"*). The bargaining unit is comprised of 11 employees in the Air Traffic Control group (referred to as the "AI" group[1]) which is part of the Core Public Administration. The employees in this group perform an important regulatory function with respect to Canada's air traffic control system.

[2] Operational responsibility for civilian air traffic control operations in Canada lies with Nav Canada, a private not-for-profit non-share corporation that falls under the *Canada Labour Code.* Nav Canada's revenues are mainly generated through user fees from airlines and airports. Its 15 member board of directors includes 3 appointees from the Government of Canada. The vast majority of Nav Canada staff are stationed at airports throughout Canada and work directly with the pilots of airplanes that are landing, taking off, and in the air. The Nav Canada non-operational group is less than 10 percent of its staff. In addition to Nav Canada, the Canadian Armed Forces has its own air traffic controller operational personnel. All members of the AI bargaining unit must have substantial previous operational experience as an air traffic controller, civilian or military.

[3] The CBA governing the AI bargaining unit expired June 30, 2022, the parties were unsuccessful in negotiating a new collective agreement, and the matter was referred to binding arbitration. A hearing was held in Ottawa on June 24 and 25, 2025, at which the parties made their respective oral and written submissions. In advance of the hearing, the parties had agreed that the term of the CBA would be July 1, 2022, to June 30, 2026. The parties expect to begin negotiations for their next collective agreement in the first half of 2026.

[4] Most of the issues referred to the arbitration board ("Board") were monetary in nature, with the most important being the wage grid. At its essence, the Employer took the position that over 98 percent of unionized employees in the Core Public Administration had finalized their collective agreements, most through negotiation

[1] The abbreviation for this group as "AI" preceded the popularization of artificial intelligence, commonly referred to as AI. The two abbreviations are completely unrelated.

(including a work stoppage) and some through arbitration, a clear wage pattern had been set, and there were no compelling reasons to depart from the pattern. The Employer offered the wage pattern to the AI bargaining unit. The Union took the position that members of the bargaining unit should not be compared to the rest of the public service but to the non-operational employees in Nav Canada, justifying a wage increase in excess of the core public service pattern. The proposed increase would be accomplished through adding an additional higher step to the wage grid.

[5] In making their submissions, both parties relied on section 148 of the *FPSLRA* which sets out the criteria that arbitration boards must consider. Section 148 is set out below:

> In the conduct of its proceedings and in making an arbitral award, the arbitration board must take into account the following factors, in addition to any other factors that it considers relevant:
>
> (a) the necessity of attracting competent persons to, and retaining them in, the public service in order to meet the needs of Canadians;
>
> (b) the necessity of offering compensation and other terms and conditions of employment in the public service that are comparable to those of employees in similar occupations in the private and public sectors, including any geographic, industrial or other variations that the arbitration board considers relevant;
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> (c) the need to maintain appropriate relationships with respect to compensation and other terms and conditions of employment as between different classification levels within an occupation and as between occupations in the public service;
>
> (d) the need to establish compensation and other terms and conditions of employment that are fair and reasonable in relation to the qualifications required, the work performed, the responsibility assumed and the nature of the services rendered; and
>
> (e) the state of the Canadian economy and the Government of Canada's fiscal circumstances.

[6] Consistent with these statutory factors, interest arbitration boards have long been guided by the principle of replication. Arbitrator Keller, in a 2024 interest arbitration involving the Aircraft Operations Group (AO) under the *FPSLRA,* wrote that "the replication principle requires an arbitrator or board of arbitration to put itself in the shoes of the parties and try to replicate what the parties would have done had they

been able to conclude a freely negotiated collective agreement" (*Canadian Federal Pilots Association and Treasury Board* (2024) CanLII 116305 (Keller) para. 4).

[7] The Board has reviewed the submissions of the parties relative to the section 148 criteria and the replication principle and has concluded that the wage grid adjustments and the majority of other monetary issues for the term of the CBA should follow the clear pattern established in the Core Public Administration. The Union has been unable to persuade the Board that there is a sufficient basis for the AI group to deviate from the general pattern. The replication principle, based on the pattern for the more than 98% of employees who have settled or have had collective agreements imposed by arbitration, is a powerful factor in the Employer's favour.

[8] First, there is no dispute that non-operational staff in Nav Canada, many of whom perform administrative and regulatory duties somewhat, but not exactly, akin to the AI bargaining unit, receive higher salaries than the AI bargaining unit members. However, non-operational staff are a small component within Nav Canada; it is reasonable to infer that the compensation of the non-operational staff is driven by supply and demand for operational air traffic controllers (i.e. the people who directly guide the airplanes) and are a beneficiary of the bargaining strength of the operational group, i.e., a rising tide lifts all boats. The Board is not convinced that the higher salaries of the non-operational group within Nav Canada is a reason for the AI group to depart from the federal public service general pattern.

[9] Second, the AI bargaining unit members are not the only regulatory employees within the federal public service. Within transportation, there are railway and marine regulators. Outside transportation, federal public service employees regulate mines, forests, and food security. There is no evidence that these other federal government regulatory employees deviated from the general pattern.

[10] Third, a problem with recruitment and retention could justify a departure from the general pattern. However, the evidence established that the AI group has been very stable. Of the 11 employees, 7 came from the Canadian Armed Forces, 3 from Nav Canada, and 1 from the Australia public service (with previous Nav Canada experience). They were hired between 2011 and 2024 and there was no evidence of difficulty recruiting new employees. It is true that 9 employees are in their late 50s or

over (the oldest is 62) and only 1 employee is under 50. Their years of service with Transport Canada range from 2 to 18 years.

[11] A member of the bargaining unit (Mr. Martin Gagnon) spoke at the hearing and stated that there is a significant group of employees who expect to retire within two to three years. Mr. Gagnon agreed that these retirements would not likely be delayed even if the Union's proposal was accepted, but suggested that better compensation would help future recruitment. He also pointed to the risks of waiting until a recruitment problem actually arose because of the required training period for new members of the AI group and the expectation that current group members would be needed to train the new recruits.

[12] The difficulty for the Board in accepting the Union's position that significant recruitment and retention issues are on the horizon and should be squarely addressed in this award is that these issues have not manifested during the term of collective agreement that is being arbitrated. While the Board recognizes that there is a potential benefit of getting ahead of the recruitment and retention issue, we are also aware that the parties will be back at the bargaining table in less than a year. If recruitment and retention has emerged as a problem in the interim, the parties will be in a position to address it at the bargaining table. In the Board's view, there is insufficient evidence of an actual recruitment and retention problem to justify a deviation from the general pattern.

[13] In reaching this conclusion that a recruitment and retention problem has not manifested at this time, undermining the Union's case, the Board has considered two arbitration decisions submitted by the parties: *Canadian Federal Pilots Association and Treasury Board* (2005) CanLii 35719 (Norman) and *Canadian Federal Pilots Association and Treasury Board* (2024) CanLII 116305 (Keller). The decision by Arbitrator Norman also involved the AI group and an argument around retention and recruitment. The arbitrator rejected a Union proposal, based on higher Nav Canada compensation, for an award in excess of the general pattern. He found an "absence of **demonstrated** necessity" (para. 7, emphasis added) and that section 148 "does not invite the board to engage in any preemptive wage restructuring" (para. 8). The Norman award was upheld on judicial review. We reach a similar conclusion – there is not yet a demonstrated necessity and we need to be cautious about "preemptive restructuring", especially given the upcoming contract renewal negotiations.

[14] The Keller award for the Aircraft Operations Group (AO) did in fact award an over-the-pattern wage increase but only to a specific portion of the bargaining unit, namely the 13 percent of the bargaining unit that was involved in flying. Recognizing a serious pilot shortage and escalating pilot wages, the arbitration board awarded higher compensation to the pilot group. However, the regulatory group (76 percent of the bargaining unit) and the training group (11 percent of the bargaining unit) received the prevailing compensation pattern. Applying this logic to the current case, if members of the AI bargaining unit were involved in direct air traffic control, the case for a higher wage increase would be stronger. But all members of the bargaining unit perform a regulatory function, not an operational one. The Keller award supports the position of the Employer that a departure from the general pattern is not justified.

[15] Based on the aforegoing, the Board makes the following rulings with respect to the issues in dispute:

WAGE GRID INCREASES (APPENDIX A)

A. Economic Increases July 1, 2022 – 3.5%
July 1, 2023 – 3.0%
July 1, 2024 – 2.0%
July 1, 2025 -- 2.0%

B. Wage Adjustments July 1, 2022 – 1.25%
July 1, 2023 – 0.5%
July 1, 2024 – 0.25%

C. One Time Payment on collective agreement implementation (not added to the wage grid)

$2500 for each member of the bargaining unit.

D. Retroactivity

The above increases are retroactive to the dates indicated and are to be implemented in accordance with the applicable collective agreement implementation language.

EXTRA WAGE GRID STEPS (APPENDIX A)

There shall be no change to the number of steps in the AI group wage grid.

OVERTIME (ARTICLE 17.02)

There shall be no change to article 17.02 overtime rates.

HOLIDAY PAY (ARTICLE 20.02)

There shall be no change to article 20.02 holiday pay rates.

TRAVEL (ARTICLE 24.02)

The Union was concerned that pay for travel time was capped at 15 hours, resulting in employees not receiving pay for very lengthy travel (e.g. Bangkok, Singapore). It was also claimed that the current system created an incentive for employees to artificially break up trips to ensure full travel time payment, a result in no one's interest. The Board is sympathetic to this concern but it was unclear the extent to which this travel cap is an actual rather than hypothetical problem. The Board recommends that article 24.02 be the subject of labour-management consultation. For this collective agreement, however, there shall be no change to this provision.

VACATION LEAVE (ARTICLE 26.01)

There shall be no change to the current vacation leave provisions.

DUTIES IN A HIGHER CLASSIFICATION (ARTICLE 41.03)

Article 41.03(a) is amended by replacing "at least four (4) consecutive working days" with "at least three (3) consecutive working days".

The remainder of article 41.03 is unchanged.

OVERPAYMENT (ARTICLE 41.05)

Article 41.05 is amended by inserting the following new language as the second sentence in article 41.05 (after the words "recover the overpayment").

"Such advice will be provided as soon as possible after the discovery of the overpayment". The remainder of article 41.05 is unchanged.

NEW APPENDIX C, ARTICLE 2(C)

The following provision shall be added to the new Appendix C as article 2(c).

"Prospective compensation increases and retroactive amounts that require manual processing will be implemented within three hundred and sixty (360) days after signature of this agreement".

LEAVE FOR TRADITIONAL INDIGENOUS PRACTICES, NEW ARTICLE

The Employer's proposal for leave for traditional indigenous practices, as set out on page 79 of its arbitration brief, is accepted and shall be added to the collective agreement in an appropriate place.

IMPLEMENTATION AND RETAINED JURISDICTION

This award is to be implemented in accordance with Appendix C: *Memorandum of Understanding Between the Treasury Board and the Canadian*

Air Traffic Control Association (CATCA) UNIFOR Local 5454 with respect to the Implementation of the Collective Agreement.

The arbitration board will retain jurisdiction to address any issues that may arise with respect to the application or implementation of any provision in this award.

July 21, 2025.

"Allen Ponak"

Allen Ponak, Chair of the arbitration board

I concur. "Luc Presseau"

Luc Presseau, Treasury Board Nominee

I dissent. Dissent Attached.

Gordon Howe, Bargaining Agent Nominee

Dissent of the Bargaining Agent Nominee

I agree that the main issue is the question of demonstrated necessity. The question is how this concept should be applied. The current award, consistent with the Norman decision, applies a static, or indeed a backward-looking, approach to the issues raised. But this approach necessarily involves fixing problems after they occur rather than anticipating problems and trying to prevent them from occurring.

A forward-looking approach would examine not only what has happened (with the usual cautions about drawing conclusions from very small numbers) but also looking at the factors that can be identified as important in the near future. The standard for evidence should be high, especially in regard to relevance, but conclusions can still be drawn. Indeed, the Employer adopted exactly this approach on their presentation on economic factors and potential future patterns. In my opinion it should also be applied to the larger questions of staffing and service delivery.

The union has presented significant evidence, some as anecdote - which is still a form of evidence, to support their position that some steps should be taken now to address a predictable problem arising. The unusual age demographics of the unit, the restricted labour market from which employees are drawn, the continually increasing compensation gap between the Employer and others in this restricted market, small group dynamics, and the competition for available talent are identifiable factors and can be evaluated. This would allow for steps to be taken which start to address the oncoming problem.

But this is not where we are. I think the award undervalues the “potential benefit of getting ahead of the recruitment and retention issue” rather than waiting until the next round of bargaining. My concern is that even that relatively short interval between rounds of bargaining will allow a major staffing problem to develop at the wrong time. The staffing events that occurred in the few years after the Norman decision do not provide comfort on this question.

Air traffic control is currently undergoing radical change in service delivery, training, and skill sets, all driven by new technology. If Nav Canada meets its stated targets, the next 6 years will see a transition to an automated, fully integrated delivery of control services (Trajectory-Based Operations, or TBO); some of these changes have already taken place. But these developments are at risk of happening in a regulatory vacuum, which must be addressed, and the members of this bargaining unit are the people who have to meet the challenge. This is not a time for a staffing problem.

The award is consistent with the Norman decision and, in parts, with the Keller decision, and presents an articulate rationale for the award. Indeed, it adopts an approach that is common in the public service. But these specific circumstances merit a different approach - one that addresses clear issues in the immediate future which will have a deleterious impact on the work of this unit at a critical time. Unfortunately, that argument has failed.

I lament the missed opportunity to recognize a unique situation, even for this bargaining group, and to take steps to ameliorate easily identifiable and serious problems on the immediate horizon. I respectfully dissent from the majority.

Gordon Howe,

Bargaining Agent Nominee