IN THE MATTER OF AN EXPEDITED ARBITRATION

Between

AIR CANADA

(the “Company”)

and

INTERNATIONAL ASSOCIATION OF MACHINISTS & AEROSPACE WORKERS

(the “Union”)

Grievance 20210102340 - Remedy

Before: Christine Schmidt, Sole Arbitrator

Appearances:

For the Company: John Beveridge, Senior Director, Labour Relations
Andrea Zaffaroni, Senior Labour Relations Manager
Rebecca Papaconstantinou, Labour Relations Specialist

For the Union: Lou Pagrach, International Representative
Dave Flowers, President & Directing General Chairperson District 140
Steve Prinz, International Representative
Kevin Timms, International Representative
Craig Chard, General Chairperson
Rene Grenon, General Chairperson
Chris Greniuk, General Chairperson
Mahmoud Khatib, General Chairperson
Jason Jiskra, General Chairperson
Guillaume Lingat, General Chairperson
Chris Lipsit, General Chairperson

This matter was heard in Toronto on January 7, 2025.

AWARD

1. I was appointed pursuant to the parties' Memorandum of Agreement dated November 25, 2014, revising the Collective Agreement Letter of Understanding #8 – Expedited Arbitration.

2. The Memorandum of Agreement specifies that, "Decisions rendered by the arbitrator during an expedited arbitration hearing will be without prejudice or precedent to any other existing or future matter unless otherwise agreed by the Parties at the time they agree on the [Expedited Arbitration] agenda…".

3. By decision dated May 27, 2021, the Union successfully challenged the Company's decision to invoke the Off-Duty-Status ("ODS") provisions of the Collective Agreement in January 2021. I allowed the grievance, directed the Company to cease and desist applying article 20.14, and remitted the issue of remedy to the parties. The Company filed an application to judicially review the decision, which application was dismissed orally on September 13, 2022 with written reasons released on January 13, 2023.

4. The parties were able to resolve the issue of remedy for certain employees' groups who were to be made whole:

- Employees who were placed on ODS out of seniority;
- Employees who had colleagues junior to them to displace in a lower classification at the point (Bump down); and
- Employees who had the seniority to utilize their non-accrual seniority at the point.

5. The outstanding remedial dispute between the parties pertains to the appropriate remedy for those employees who had potential options to displace junior colleagues, in other bases, either in their original classification or a lower classification (bumping out).

6. The Union maintains the position that every impacted employee that held a potential option to bump out must be compensated. The Union argued that since the Company invoked ODS, ignored article 16, which enshrines fundamental seniority rights in the

default process for reducing the workforce, the Company should be held accountable and bear the consequences for having done so contrary to the Collective Agreement.

7. After reviewing the staff reduction (layoff) provisions of the Collective Agreement and the submissions and evidence relied on by the parties, I am satisfied that only a portion of the employees with possible options to displace junior colleagues would have ultimately been able to displace and/or would have realistically exercised such an option. In short, the Union's position would ultimately provide certain employees with compensation to which they would not have been entitled.

8. The layoff process flow is entirely predicated on the election of impacted employees holding the most seniority at the time they are notified of their impending layoff. It is, for all intents and purposes, impossible to replicate a layoff taking place in January 2021 for those employees who had potential options to displace junior colleagues, in other bases, either in their original classification or a lower classification (bumping out) with any reasonable degree of accuracy. By reference to the Company's submissions, it is simply not possible to "unscramble the proverbial egg."

9. The Company submits that only a maximum of 30% of the employees with a possible bump out option would have exercised the option. Its submission is entirely based by reference to bumping out options exercised by impacted employees during the summer 2020 layoff.

10. I do not accept the Company's assumption that the situation of employees with a possible bump option in January 2021 was the same as it was in the spring and summer of 2020. By early 2021, the initial shock of the COVID-19 pandemic had worn off. Though the implications of the pandemic initially appeared as though they would be temporary, by 2021, it had become clear that the pandemic would be a longer-term adjustment. Put succinctly, Impacted employees would have reacted differently to a layoff in early 2021. In my estimation, a significantly higher percentage of employees in this bargaining unit would have exercised bumping out options to retain employment in early 2021.

11. I find that it is more likely than not that 70% of the employees with a bumping out option would have exercised said option, in seniority order.

12. I therefore order the Company to review the list of impacted employees by seniority and classification and determine the group of 70% entitled to compensation, together with the amount of compensation owed to each employee.

13. I understand that to engage this process and to pay those employees identified approapriately constitutes a labour-intensive endeavour. The Company is directed to complete the process and make payment to the identified employees by no later than March 17, 2025. Further, the Company is directed to communicate with the Union and share information with it. The parties shall endeavour to resolve any issues that may arise in the interim.

14. I remain seized.

Dated at Toronto on this 27th day of January 2025.

Christine Schmidt, Sole Arbitrator