

**In the Matter of an Arbitration  
Under s. 18.1(3) and (4) of the *Canada Labour Code*  
and CIRB Order No. 1559-NB**

**BETWEEN:**

**WESTJET, AN ALBERTA PARTNERSHIP AND SUNWING AIRLINES INC.  
(“WestJet/Sunwing”)**

**AND**

**THE MASTER EXECUTIVE COUNCIL FOR WESTJET PILOTS AS  
REPRESENTED BY AIRLINE PILOTS ASSOCIATION, INTERNATIONAL  
(the “WestJet MEC”)**

**AND**

**THE MASTER EXECUTIVE COUNCIL FOR SUNWING PILOTS AS  
REPRESENTED BY UNIFOR  
(“UNIFOR”)**

**AND**

**THE MASTER EXECUTIVE COUNCIL FOR ENCORE PILOTS AS  
REPRESENTED BY ALPA  
(the “Encore MEC”)**

**BEFORE:** Eli A. Gedalof, Sole Arbitrator

**HEARING HELD:** October 19 and 20, 2024

**APPEARANCES**

See Schedule “B” attached.

## **AWARD**

### **INTRODUCTION AND BACKGROUND**

1. This award determines the integration of the seniority lists for pilots at WestJet and Sunwing, arising from the acquisition of Sunwing by WestJet on May 1, 2023. The acquisition arose from a January 1, 2022 share purchase agreement, wherein WestJet agreed to purchase all the shares of Sunwing. WestJet publicly announced its intention to go through with the acquisition on March 2, 2022. The parties agree that March 2, 2022 is therefore the date on which the affected employees received constructive notice of the merger. On March 9, 2023, the Governor in Council approved the transaction under the *Canada Transportation Act* (S.C. 1996 c.10).

2. WestJet is a full-service airline operating across North America and the Caribbean, in addition to offering limited destinations in Europe and Asia. It is Canada's second largest airline, operating a fleet of 123 narrow body Boeing 737 and 7 Boeing 787 wide body aircraft.

3. Sunwing is a low-cost leisure carrier, predominantly serving the Canadian winter vacation market with Caribbean destinations and limited flights to the United States. Sunwing owns 17 Boeing 737 aircraft and supplements its fleet with leased aircraft to meet seasonal demand. Historically, it has also deployed some of its aircraft and pilots to Europe in the summers, when demand for its services in the Canadian market is low.

4. Sunwing pilots are represented by UNIFOR while WestJet pilots are represented by ALPA. ALPA also represents a separate bargaining unit of pilots at Encore, WestJet's regional subsidiary. Pilots at Encore have a limited interest in this proceeding by virtue of a Pilot Transfer Agreement applicable to a sub-group of WestJet and Encore pilots, as discussed further below.

5. In this proceeding, the three pilot groups were represented by their respective Master Executive Councils and will be referred to as the "WestJet MEC", "Unifor" and the "Encore MEC". WestJet and Sunwing will be referred to separately when referring to their distinct operations, and as "WestJet/Sunwing" when referring to their joint status as a party to this proceeding.

6. The Canada Industrial Relations Board (the "CIRB") has declared, in Board order no. 11896-U, that WestJet's acquisition of Sunwing constitutes a sale of business for the purpose of section 44 of the *Canada Labour Code* (the "Code"). It has further determined that pilots working at both airlines will fall within one consolidated bargaining unit, at WestJet, represented by ALPA, effective November 30, 2024.

7. As a precursor to merging operations and the integration of the pilots into a single bargaining unit, it is necessary to establish an integrated pilot seniority list ("IPSL"). To that end, the CIRB ordered as follows:

1. The integration of the seniority lists of pilots at WestJet and Sunwing shall be determined by a sole arbitrator jointly selected by the parties, namely Eli Gedalof, with the following parameters:

(a) The parties to the arbitration of the seniority lists integration are ALPA, WestJet Master Executive Council, Unifor, Unifor Local 7378 and WestJet/Sunwing;

(b) WestJet Encore Master Executive Council will have status as an intervenor with full rights to participate in the arbitration, bearing equal costs as the other pilot union parties to the arbitration, and agrees to be bound by the existing briefing schedule and the result of the arbitration;

(c) The arbitrator's jurisdiction is limited to determining a fair and equitable integrated seniority list. In making this determination, factors to be considered, in no particular order and with no particular weight, shall include but not be limited to the following:

- Career expectations
- Longevity
- Status and category

(d) The arbitration process, including the scheduling and briefing schedule, will be conducted as per the agreement of the parties;

(e) The arbitrator shall have all the powers that the Board would itself have in merging seniority lists under the Code;

(f) The award of the arbitrator will be final and binding on all parties participating in the arbitration;

2. The integrated pilot seniority list shall be produced to WestJet no later than October 30, 2024, for the primary purpose of transferring Sunwing

pilots to WestJet over a transition period scheduled to be completed on or before November 30, 2025.

8. Mergers are common in the airline industry, and the integration of pilot seniority lists has proven to be a complex, highly contested, controversial and often bitterly fought issue. A pilot's seniority is of great significance over the course of a career. While the import of seniority under the current ALPA WestJet collective agreement is somewhat attenuated in comparison to many other airlines by virtue of its "socialized bidding" system, which will be discussed further below, it nonetheless remains of critical importance. In addition to providing job security in a notoriously volatile industry, pilot seniority is the primary factor in determining rank and upgrades in rank from First Officer to Captain (status), home base, the type of equipment flown (category), and whether a pilot is a regular blockholder or on reserve.

9. The significance of seniority in determining status (i.e. First Officer or Captain) bears emphasis. Upgrading to Captain is a pivotal moment in a pilot's career, with major economic implications. Under the current WestJet collective agreement, for example, a 737 Captain with 9 years of service will be paid almost 73% more than a First Officer with the identical years of service. On the other hand, because it is necessary to maintain a balance of Captains and First Officers at each base, a newly upgraded Captain may transition from being a senior First Officer holding a regular block of flying from the base of their choice, to being a junior Captain flying reserve from a less preferred base, perhaps commuting to that base from their home. Individual pilots may choose to exercise their seniority to favour different priorities, but in all cases their seniority is the critical factor in defining their available options.

10. As is evident from a review of the authorities and precedents filed by the parties, no two mergers are entirely alike. Identifying an equitable model for the integration of seniority lists is a highly fact specific exercise. While the factors of longevity, career expectations and status and category are frequently applied, there is no mechanistic or universally recognized formula for doing so.<sup>1</sup> In an ideal case, the pre-merger operations, hiring patterns and

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<sup>1</sup> These factors form part of ALPA's merger policy. While that policy is not applicable in the context of a merger involving UNIFOR, as opposed to two ALPA bargaining units, the factors from that policy were adopted by the CIRB in referring the IPSL to an arbitrator.

career trajectories of the two airlines would mirror each other, and seniority lists could simply be dovetailed with minimal impact on either group.

11. Unfortunately, this is not such an ideal case. There are significant operational differences between Sunwing and WestJet. Pilots at WestJet have, on average, substantially longer tenure than pilots at Sunwing, and pilots at the two airlines experience very different working conditions and career trajectories. First Officers at Sunwing currently upgrade to Captain after approximately 5 years. At WestJet, pilots upgrade at approximately 9 years. This discrepancy is what makes it most challenging to balance the three factors in a manner that produces a fair and equitable seniority list.

12. In this case, the parties' perspectives and their proposed IPSLs are miles apart. This notwithstanding that the parties engaged in substantial negotiations prior to participating in the instant mediation/arbitration process. In the mediation/arbitration process, prior to commencing mediation, the parties exchanged extensive briefs and reply briefs, including will-say statements and documentary evidence. Six days of in-person mediation were then conducted over 3 weekends, preceded and interspersed with additional meetings, discussions and proposals. While progress was made in addressing some ancillary issues, the parties remained very far apart on the core issue of establishing an IPSL. Consequently, the parties filed supplementary briefs and materials, together with updated proposals, and presented final argument over two days on October 19 and 20, 2024. Subsequent to final argument, with the consent of all parties, I met with the technical advisors for Unifor and the WestJet MEC to review several alternative integration models. The purpose of this meeting was to ensure that I understood the effect, up and down the list, of altering different variables in the different models.

13. As the IPSL must be presented to the Company on October 30, 2024, time is clearly of the essence.

14. In arriving at this award, I have carefully reviewed all the materials filed, including the parties' briefs, the many will say statements, the materials submitted in support of those statements, numerous alternative models for constructing an IPSL, and the authorities referred to by the parties. Those materials are far too voluminous and detailed to summarize in this award,

particularly given the time constraints, but all have been considered and weighed.

15. I will address the parties' positions and proposals in detail below. In broad terms, however, I note the following:

- a) Unifor seeks an integration model that will largely—though by no means entirely—preserve the relative seniority of its pilots. It seeks to ensure that its Captains will be able to maintain their status post-merger, and that its post-constructive notice First Officers will continue to attain upgrades to Captain positions with fewer years of service than would the WestJet pilots.
- b) The Encore MEC seeks an integration model based strictly on date of hire, with no allowance for the impact that such a model would have on downgrades for the pre-merger Sunwing pilots, and corresponding upgrades for WestJet pilots, or on the prospects for future promotion.
- c) The WestJet MEC also seeks an integration model that would hew toward longevity or date of hire but would allow in the alternative for some adjustment to mitigate against at least some of the downgrades in the status of Sunwing pilots that would otherwise result.
- d) All parties agree that allowance ought to be made at the top of the seniority list so that the most senior WestJet pilots continue to have exclusive access to Captain positions on the 787 aircraft. They do not agree on the appropriate mechanism for doing so.

16. Having carefully considered each of these proposals, I have concluded that none of the models adequately balances the three factors and the relevant equities in arriving at a fair and equitable result.

17. Unifor's proposal, in effect, gives near exclusive weight to the status and category factors, while largely ignoring the longevity factor. Its approach would see a substantial portion of the Sunwing pilot group gain up to four years of seniority over their WestJet colleagues. While adjustments of this magnitude, or even greater, have been found appropriate in other cases, they

are not justified here on any balanced consideration of the factors and the circumstances of this merger.

18. At the other end of the spectrum, the WestJet and Encore MEC's date of hire proposal gives exclusive weight to the longevity factor (albeit through date of hire). And while they argue that the result of such an approach is one that is properly responsive to the three factors, they do so by improperly discounting the equities that Sunwing brings to the merger, placing too much weight on Sunwing's financial vulnerability, downplaying the impact of downgrades on Sunwing Captains, and by failing to properly account for the corresponding windfall of upgrades that would accrue to WestJet pilots.

19. Though less so than a strict the date of hire proposal, I find that the WestJet MEC's alternative proposals also over-weight the longevity factor. Its model based on longevity, as distinct from date of hire, is also untenable for several practical reasons that will be discussed. But I also find that the WestJet MEC's first alternative proposal provides a structure that, with some adjustment, produces an outcome that properly balances the three factors and that is fair and equitable in all the circumstances.

20. I address the issues in this award in the following order:

- I) Operations at Sunwing and WestJet and important differences as they relate to seniority;
- II) WestJet/Sunwing's role in this proceeding;
- III) The Encore MEC's status in this proceeding;
- IV) The parties' proposals;
- V) The three factors: Longevity, Status and Category and Career Expectations;
- VI) Pilot Transition Procedure;
- VII) The IPSL

## **OPERATIONS OF WESTJET AND SUNWING**

### **WestJet's Operations**

21. WestJet was founded in 1996. Its managing partner is WestJet Airlines Ltd., which is also the directing mind of Sunwing and Sunwing Vacations. The WestJet group of companies includes WestJet, Sunwing and Sunwing Vacations, Swoop Inc. (which ceased operations in 2023), WestJet Encore Ltd., WestJet Vacations and WestJet Cargo.

22. WestJet is primarily a scheduled service airline with a domestic network, flying to over 100 destinations in 26 countries throughout North America, Central America and Asia. Its fleet consists of 122 Boeing 737 narrow body aircraft and seven Boeing 787 wide-body aircraft. It employs a total of 1,965 pilots. Its 787 aircraft are flown by 100 Captains and 122 First Officers. Its 737 fleet is flown by 938 Captains and 805 First Officers. Currently, WestJet operates out of five crew bases. Its four western bases are Vancouver, Calgary, Edmonton and Winnipeg. Its sole eastern base is in Toronto. Its largest base is in Calgary, which is also the exclusive base for its fleet of 787s, followed in size by Toronto and Vancouver.

23. Since its inception in 1996, WestJet has experienced substantial growth. It began with three 737-200 aircraft, servicing five destinations in western Canada. By 2012, its fleet had grown to 100 aircraft, and it has continued to grow since to its current size, including with the introduction of the wide-body aircraft in 2019. In 2022 WestJet placed an order for an additional 22 aircraft and in February 2024 announced that it had increased that order to 65. The company has announced that it expects to begin receiving these additional aircraft in 2025. There is considerable risk in predicting the future in the airline industry—a theme I will return to—but there is nonetheless a foundation for concluding that WestJet is entering another phase of significant growth.

24. WestJet has also announced 11 new leases for additional 737 aircraft, including six from the now defunct Lynx airline. As discussed further below, Unifor maintains that these aircraft were acquired to meet the new demands associated with the Sunwing work, previously carried out by Sunwing using leased aircraft.

## **Sunwing's Operations**

25. Sunwing operates on a very different business model than WestJet. It is a leisure carrier whose primary business is to serve the Canadian winter vacation market. Consequently, while WestJet offers a wide range of shorter and longer flights, including long-haul flights with its 787s, Sunwing focuses on international routes that are, on average, longer than the routes flown by WestJet's 737s. Sunwing operates from permanent bases, from largest to smallest, in Toronto, Montreal, Vancouver, Calgary and Quebec City. It also operates from seasonal bases in Edmonton and Winnipeg.

26. Sunwing's own fleet consists of 17 737s. Due to the nature of its business, however, Sunwing is required to substantially increase and decrease its capacity on a seasonal basis. From requiring a high of approximately 40 aircraft at the peak winter travel time, it requires significantly less than its own aircraft in the summer months. Historically, Sunwing has addressed this variability in demand through a combination of using its own aircraft, a variety of aircraft leasing arrangements as described below, and summer foreign deployments of some of its aircraft and pilots to Europe.

27. In terms of the number of pilots Sunwing requires, there are three kinds of leases. "Dry leases" are aircraft that Sunwing obtains without any accompanying crew, requiring Sunwing pilots and flight attendants to operate them. "Wet leases" are aircraft that Sunwing leases that come with their own flight crew, requiring no Sunwing crew to operate them. "Damp leases" are aircraft that are leased with pilots, but not flight attendants.

28. For the winter vacation season, Sunwing supplements its fleet with a combination of dry and wet leased aircraft. It also meets increased demand in the winter vacation season using overtime.

29. In the summer months, when Sunwing's travel business is dramatically reduced, it has historically deployed its surplus aircraft to European carriers, where they are flown by Sunwing pilots. European summer deployments are viewed as a desirable perk by many Sunwing pilots, and an important lifestyle component of working at Sunwing. Pilots who do not deploy to Europe are able to take vacation in the desirable summer months, also viewed as a perk of working at Sunwing. Between summer deployments, vacation and training

requirements, Sunwing is able to retain its full complement of pilots, consisting of 245 Captains and 251 First Officers, year-round without seasonal layoffs.

30. It should be noted that upon merger, summer deployments will no longer be available. Unifor describes this as a choice made by WestJet and argues that it ought not to be relied upon to diminish the flying that Sunwing brings to the merger. However, in approving the merger, the Governor in Council, through PC Order No. 2023-0210, directed, among other Public Interest Measures, that WestJet end Sunwing's practice of leasing aircraft both from and to non-Canadian carriers. It would appear, therefore, that WestJet has no choice but to end the summer deployments. By the same token, WestJet will also cease the practice of wet leasing planes from European carriers. This means that block hours that were not previously flown by Sunwing pilots pre-merger, will be flown by WestJet pilots post-merger.

### **Distinguishing Features**

31. From a pilot seniority perspective there are several distinguishing features between the two airlines.

32. First, by virtue of having commenced operations some 9 years earlier, the average seniority of WestJet's pilots is significantly higher than Sunwing's. There are approximately 410 WestJet pilots who were hired before the first pilot on the Sunwing seniority list.

33. Second, by virtue of its status as a more mature airline, and because it has a lower rate of pilot turnover, the average time it takes for a pilot at WestJet to upgrade from First Officer to Captain is roughly 9 years, as compared to roughly 5 years at Sunwing. As will be apparent in the discussion below, this differential, reflected in the fact that there are many Sunwing Captains whose tenure with Sunwing is significantly shorter than many WestJet First Officers, presents the single greatest challenge in arriving at an integrated seniority list that is fair and equitable.

34. Third, there is a significant difference between the way pilots at the two airlines generally advance up the pay scale based on years of service. Under the Unifor Sunwing collective agreement, pilots advance up the First Officer or Captain grid, as applicable, based on their years of service *in the position*.

Under the ALPA WestJet collective agreement, pilots are placed on the appropriate grid based on their *years of active service* with the company, irrespective of how much of that time was spent as a First Officer or Captain.

35. Thus, assuming a typical Sunwing pilot advances from First Officer to Captain after approximately 5 years, upon upgrading, the newly minted Sunwing Captain would then begin to work their way up from the bottom of the Captain grid. In contrast, at WestJet, a typical pilot might begin as a First Officer and take nine years to upgrade to Captain, but upon doing so they would immediately be placed at step 9 of the Captain's grid. In other words, even though the WestJet pilot takes longer to upgrade, upon doing so they will immediately accelerate up the Captain's grid years ahead of the Sunwing pilot. Conversely, the Sunwing pilot may upgrade to Captain 4 years more quickly than a pilot at WestJet, but it will take that pilot 14 years to reach step 9 of the Captain's grid, as compared to the 9 years it will take the WestJet pilot.

36. Fourth, the WestJet ALPA collective agreement provides for preferential, or "socialized" bidding. While not unique to WestJet, socialized bidding distinguishes WestJet from many other carriers, including Sunwing, which operate under a more conventional seniority-based bidding system. Under the socialized bidding system, pilots bid based on their preferred scheduling attributes (set out at Article 8-19 of the Collective Agreement). As described by the WestJet MEC, the upshot is that pilots can generally attain the scheduling attributes they prioritize irrespective of their seniority, but no pilot, no matter how senior, will be able to attain *every* attribute they want. For example, a pilot who prefers to maximize efficiency by flying the fewest possible number of days in a month can bid based on that priority, but may work long days away from home. Conversely, a pilot who wants to maximize the days they are home for supper can choose to prioritize release time from pairing instead, though it may mean they work more but shorter days.

37. Vacation scheduling is also done at WestJet through a form of socialized bidding. Pilots are allocated points based on their service and then choose how many of those points they wish to expend on a given week of vacation. Consequently, a less senior pilot may be able to attain a desired week of vacation in preference over a more senior pilot by choosing to allocate more

points to obtaining that particular week. At Sunwing, vacation is bid based on seniority.

38. Finally, I note that overtime is a more significant component of pilot compensation at Sunwing. Hourly rates under the Unifor Sunwing collective agreement are significantly lower than under the ALPA WestJet collective agreement. Further, because the pilots at WestJet are the more senior group, and because the WestJet collective agreement provides for more favourable progression up the wage grid upon upgrade from First Officer to Captain, the average pilot wage at WestJet is higher than average wage at Sunwing. However, if one compares pilots at the two airlines based on their years of service, pilots at Sunwing, on average, earn more annual income than pilots at WestJet. Indeed, the highest earning pilot amongst both groups, based on 2023 T4 earnings, is a Sunwing pilot with approximately 8 ½ less years of service than the most senior WestJet 787 pilot. Extensive overtime opportunities at Sunwing, and the exercise of a more traditional seniority-based bidding system, help explain how this is possible.

### **WESTJET/SUNWING'S ROLE IN THIS PROCEEDING**

39. WestJet/Sunwing takes no position on the construction of the IPSL. Its primary interest throughout the mediation/arbitration was in minimizing any cost or operational constraints arising from this award. Its participation was therefore largely directed toward establishing the terms of the Pilot Transition Process. WestJet/Sunwing acknowledged that transition provisions were necessary to soften the immediate impact of the merger on pilots and was supportive of the provisions that have been ordered in this award.

40. Additionally, WestJet/Sunwing provided necessary disclosure, information and clarification of the facts relied upon by the pilot groups. That information is reflected in this award and is addressed where necessary. As a point of emphasis, WestJet stressed in its oral submission that all the evidence before me confirms that WestJet is a healthy, profitable and growing company. WestJet also confirmed in its oral submissions that while it takes no specific position on the construction of the IPSL, it is a party to the Pilot Transfer Agreement between WestJet, Encore, Swoop and ALPA, which was specifically entered into to assign seniority rights of a defined group of Encore pilots. It

agreed that any fair and equitable IPSL must therefore take account of those rights.

## **THE ENCORE MEC'S ROLE IN THIS PROCEEDING**

41. The Encore pilots, as represented by the Encore MEC, have a limited but important interest in the outcome of this proceeding. Encore is a regional airline launched in 2013, operating a fleet of 35 De Havilland Dash 8-400 turboprop aircraft. It is a subsidiary of WestJet but operates as a separate regional carrier.

42. On December 13, 2019, WestJet, Encore and the ALPA WestJet and Encore MECs entered into a Pilot Transfer Agreement ("PTA"). The PTA provides for a combined seniority list and the transfer of pilots from Encore to WestJet, in addition to the right for WestJet pilots to bump down to Encore in cases layoff. When Encore pilots covered by the agreement are hired by WestJet, they are placed on the WestJet seniority list based on their Encore date of hire, as opposed to starting at the bottom. Similarly, when WestJet pilots bump down to Encore, they bring with them their WestJet seniority date.

43. In June of 2020, as a result of the Covid-19 pandemic, 104 WestJet pilots exercised their right to bump down to Encore. In April of 2021, a further 215 WestJet pilots bumped down to Encore. On September 6, 2022, the WestJet MEC delivered notice to terminate the PTA, and on December 5, 2022 it became "null and void", at least on a go forward basis. On November 8, 2023, the parties signed Minutes of Settlement clarifying residual rights under the PTA. Among the clarifications is an agreement that pilots hired at Encore on or before December 5, 2022 shall retain their reserved seniority number in accordance with the terms of the PTA.

44. The Encore pilots in issue are not currently employees of WestJet, and any number of them may never be. They will therefore not be placed on the IPSL by virtue of this arbitration. But in the event that any of these pilots are hired by WestJet in the future, as can be reasonably expected to occur, their vested seniority rights will be impacted by the outcome of this arbitration.

45. The vested seniority rights of the Encore pilots are therefore an interest that must be accounted for in arriving at a fair and equitable IPSL. I have heard and carefully considered the submissions made on behalf of the Encore pilots, which were in any event adopted and repeated by the WestJet MEC. However, it is my view that it is not necessary to alter what would otherwise constitute a fair and equitable IPSL as between the WestJet MEC and Unifor in order to address this issue.

46. I reach this conclusion because the future placement of Encore pilots onto the seniority list will be dictated by their position relative to those WestJet pilots hired on or before December 5, 2022, on the combined seniority list created for that purpose—a different list than the IPSL arising from this award. I can see no reason that a result that is fair to those pre-existing WestJet pilots on the list would not, therefore, also be fair to those Encore pilots who are adjacent to them on the combined seniority list provided for by the PTA.

47. As a point of clarification, however, I note the following. In placing Sunwing pilots on the IPSL, I am not placing them on the combined seniority list under the PTA. Many will have a date of hire that pre-dates December 5, 2022, but nothing in this award should be taken as creating any rights for Sunwing pilots under the PTA. My jurisdiction does not extend to altering the terms of the PTA and I do not purport to do so.

## **THE PARTIES' PROPOSALS**

### ***Common Features***

48. There are two features common to all parties' proposals.

49. First, it is agreed that pilots hired after the constructive notice date of March 2, 2022 should be placed at the bottom of the seniority list in accordance with their date of hire. This is the overwhelmingly normative and accepted approach in pilot seniority mergers. Pilots hired post-constructive notice are aware that they are joining airlines that will soon be merged. Date of hire is the basis for establishing seniority under both collective agreements. Armed with the knowledge of the impending merger, such pilots can reasonably expect that it is their date of hire that will determine their seniority

in relation to those other pilots that were hired under the same circumstances, armed with the same knowledge.

50. Second, it is agreed that in integrating the lists, pilots from each airline will be integrated in order of their pre-merger seniority. This is to say that no pilot will be placed on the list out of order with any of their pre-merger colleagues. This outcome is achieved through what is often referred to as “stovepiping”. The IPSL is created by allocating spots on the list to one group or the other, in accordance with a set of rules. The list is then populated by starting at the top of the list and filling the openings reserved for each party in order of their pre-merger seniority, until arriving at the constructive notice pilots, who are then ordered by date of hire.

### ***The Encore MEC’s Proposal***

51. The Encore MEC proposes that the IPSL be constructed based strictly on date of hire.

52. In support of this position, the Encore MEC relies extensively on the reasons of Arbitrator Kaplan in *CUPE, Local 4055 v CUPE Local 4070 et al.*, 2024 CanLII 98591 (ON LA) (the “*Kaplan Award*”), the decision integrating flight attendant seniority in this same merger. It also cites several other Canadian airline merger decisions where date of hire seniority integration was ordered. The Encore MEC submits that date of hire integration should always be the starting point, and in this case, it satisfies all three factors, is the fairest method available and will align with the method of integration awarded for flight attendants, creating cohesion across the company. In this case, it submits, date of hire integration is to the advantage of the Sunwing pilots as compared to longevity.

53. In the Encore MEC’s submission, pilots at both airlines expect that their seniority will be based on their date of hire, as it is under both collective agreements. Citing *Air Line Pilots Association v. Air Canada et al.*, 2002 CIRB 183 (CanLII) (“*Air Canada/Canadian Airlines*”) it stresses the importance of focussing on the existing collectively bargained rights of the parties, and not speculating about future events. While it is possible that date of hire integration may result in downgrading Sunwing pilots at some point in the future, the WestJet MEC argues that this is highly speculative and may never

happen. Further, even if Unifor is correct that date of hire integration will result in some 83 pilots being downgraded, the Encore MEC submits that this is a trivial outcome in the context of a combined bargaining unit of some 2500 pilots. Such an impact on such a small group of pilots is not a good reason to distort the seniority of pilots across the list.

### ***The WestJet MEC Proposal***

54. The WestJet MEC's primary position is also that integration should be done by date of hire. It adopts the submissions of the WestJet MEC and places equal emphasis on the *Kaplan Award*. However, largely developing out of concerns expressed throughout the mediation/arbitration process, it proposes two alternative integration models. Both models seek to maintain the primacy of longevity or date of hire as the most significant factor. But they are also intended to address concerns with respect to extensive downgrading of Sunwing pilots, while simultaneously recognizing the superior "sweat equity" of WestJet pilots and minimizing undue "leapfrogging" of Sunwing pilots over WestJet pilots with greater longevity.

#### Alternative No. 1 – Senior Sunwing Pilot by Longevity: Remaining Pre-Constructive Notice Pilots Ratioed

Under this proposal, all pilots hired at Sunwing and WestJet following the constructive notice date of March 2, 2022 will be placed at the bottom of the ISL in accordance with their date of hire.

The most senior Sunwing Pilot will be placed onto the WestJet Seniority List at his longevity date of March 29, 2005 which represents this pilot's date of hire of October 26, 2004 reduced by 176 days on lay-off. As such, the most senior Sunwing Pilot is placed at 445 on the WestJet Seniority List.

The remaining pre-constructive notice pilots are ratioed 3.71:1 (WestJet 1229: 331 Sunwing).

Conditions and Restrictions

- 1) WestJet pilots have right of first refusal for any Positions on a wide body aircraft (e.g. B787) for a period of three years from the Operational Integration Date (Nov 1, 2027).
- 2) WestJet pilots have right of first refusal for any Reduced Block Program Positions for a period of three years from the Operational Integration Date (Nov 1, 2027).

Alternative No. 2 – Hybrid Date of Hire: Ratio (80:20)

Under this Proposal, all pilots hired at Sunwing and WestJet following the constructive notice date of March 2, 2022 will be placed at the bottom of the IPSL in accordance with their date of hire.

A first seniority list is constructed by sorting all pilots in order of their date of hire.

A second seniority list is constructed as follows:

- (a) 222 WestJet Pilots representing B787 Pilots; and,
- (b) ratio 4.34: 1 (1438 WJA: SWG 331) representing B737 pre-constructive notice pilots.

The Integrated Seniority List is created by applying an 80:20 (date of hire: ratio) weighting to each list.

Standard “stove-piping”: position on IPSL provides a credit for the respective MEC to assign a pilot to that position on the IPSL in accordance with that company’s seniority list.

Conditions and Restrictions

- 1) No pilot seniority out of sequence at respective airline. (e.g. A WestJet pilot with seniority #943 pre-merger, cannot find himself with higher seniority than WestJet pilot #942.)

- 2) WestJet pilots have right of first refusal for any Positions on a wide body aircraft (e.g. B787) for a period of three years from the Operational Integration Date (Nov 1, 2027).
- 3) WestJet pilots have right of first refusal for any Reduced Block Program Positions for a period of three years from the Operational Integration Date (Nov 1, 2027).

55. The WestJet MEC acknowledges that there are factual disputes that arise in attempting to calculate longevity. But it emphasizes that any movement away from longevity toward date of hire is to the benefit of the Sunwing pilots, and must be recognized in assessing the merger precedents that are based on longevity. Date of hire as a proxy for longevity will fail to fully capture the full import of the factor. Thus, in any hybrid model it should be given less weight that would be true longevity, lest it have an outsized impact. Further, citing the *Kaplan Award*, the WestJet MEC strenuously opposes granting seniority to any Sunwing Pilot prior to its existence.

56. In support of its proposals, and in opposition to Unifor's proposal that would see Sunwing pilots realize significant seniority gains of approximately 4 years for the majority of its non-constructive notice pilots, the WestJet MEC argues that the career expectations of Sunwing pilots were extremely poor and will be vastly improved at WestJet. Whereas Sunwing was facing imminent financial threat due to heavy debt burden and operating in a highly vulnerable segment of the industry, WestJet is diverse, strong and growing, and had the means to rescue Sunwing from failure. While this may not have been factor in the *Kaplan Award*, the WestJet MEC argues that it is highly relevant under the three-factor analysis required here, where career expectations are significant (see *Pilots of Alaska Airlines and The Pilots of Virgin America*, unreported, October 11, 2018 (Horowitz)("Alaska Virgin")). Pilots at Sunwing may have an expectation for quicker upgrades, and may enjoy other benefits such as "lifestyle" flying, but they understood in choosing that career path that it came with less long-term security.

57. In the WestJet MEC's submission, the loss of these expectations is more than compensated for by gains in long-term employment security and superior terms and conditions under the ALPA WestJet collective agreement, including financial terms, superior scope protection and socialized bidding. On the

WestJet MEC's analysis, any losses suffered by Sunwing pilots as a result of diminished relative seniority—a concept it vigorously rejects as applicable under the three-factor analysis—are more than made up for.

58. As an important equitable consideration, the WestJet MEC also relies on its analysis of Sunwing's block hours, and argues that the airline simply does not bring sufficient flying to the merger to justify its number of Captains. At most, it argues, the Sunwing work justifies 197 Captains. And when one looks at the result of the WestJet MEC's first alternative proposal, it roughly lines up what ought to be the comparable junior captains in a manner that is consistent with this analysis. This proposal is modelled on the Jet America and Alaska Airlines merger in *Jet America Airlines and Alaska Airlines*, unreported, April 15, 1989 (Bloch). This approach, in the WestJet MEC's submission, shows real compromise and must be seen as the *absolute* outside limit of any adjustments that should be made to seniority in this integration. This was not, it argued, a model that should be adjusted in any fashion.

59. The WestJet MEC's second alternative proposal is modelled on the *Alaska Virgin* merger, a case it maintains is highly analogous to the facts here, adjusted to reflect the use of date of hire rather than longevity in creating a hybrid list.

### ***The Unifor Proposal***

60. Unifor proposes a four-category model that, subject to creating a separate category at the top of the list for the most senior 787 Captains, is designed to maintain the status and relative seniority of all of its 737 pilots.

61. Unifor's 4-Category Capped Model is structured as follows:

- Category 1 will consist of the top 119 WestJet pilots ordered by date of hire ("DOH").
- Category 2 will consist of the next 920 WestJet pilots and the top 243 Sunwing pilots, ordered on a ratioed basis.
- Category 3 will consist of the next 633 WestJet pilots and the next 88 Sunwing pilots, ordered on a ratioed basis.

- Category 4 will consist of all WestJet and Sunwing pilots hired after March 2, 2022, in order of DOH.

#### Conditions and Restrictions

- After the IPSL is constructed based on the categories listed above, the resultant gain of any seniority slot is capped to a maximum gain of four years.
- Once the IPSL is constructed, the positions will be filled in order of pre-merger seniority. Under no circumstances will a more junior pilot in one pre-merger group skip ahead of a more senior pilot from the same group.
- For the first three years following the creation of the IPSL, upgrades to the 787 category will be reserved exclusively for WestJet pilots. Following this three-year exclusivity period, upgrades to the 787 Captain position shall be awarded on a ratioed basis of 3:1, three WestJet pilot upgrades to one Sunwing pilot upgrade. This 3:1 ratioed access to the 787 category will last for a period of two years. If no qualified former Sunwing pilots are available or bid for the positions, all positions will be awarded to original WestJet pilots.
- Reinstatement rights: any pilot from either WestJet or Sunwing who is displaced from their pre-merger base and/or Captain position shall be able to exercise a right to first priority (over all other pilots) in bidding any base vacancies (at their premerger base) and/or Captain vacancies for a period of four years from the Operational Integration Date.

62. In Unifor's submission, what distinguishes the instant case from the *Kaplan Award* is the need to address the status of Captains and prospects for future upgrades. Those authorities that endorse any kind of presumption in favour of date of hire integration do not involve the three-factor analysis that is required here. Status and career expectations are essential considerations, and the only way to preserve the status and career expectations of the Sunwing pilots is to ensure that approximately 245 of them have the absolute seniority to hold a Captain's position, and to ensure that they maintain their expected career trajectory. It is true, Unifor notes, that date of hire seniority

maintains those expectations within the parties' separate bargaining units— but neither collective agreement contemplates integrating that seniority into another group with which it has no seniority relationship. It is because integration fundamentally alters the value of the seniority accrued under each party's separate collective agreement that adjustment from date of hire is required.

63. On Unifor's analysis, its proposed integration model maintains the status and career expectations of both pilot groups, while the WestJet MEC's proposals result in extensive downgrades and hundreds of lost Captain years for Unifor's members over their careers, all to the advantage of the WestJet pilots. A date of hire integration, its modelling reflects, would result in the downgrading of 83 Sunwing Captains, and a corresponding windfall of 83 upgrades for WestJet First Officers. That, Unifor argues, is the "leapfrogging" that ought to be avoided.

64. In response to the alleged superiority of the ALPA WestJet collective agreement, Unifor refers to the cycle of collective bargaining, and the fact that but for the merger it would have had the opportunity to catch up in the next round. Further, on a proper comparison, Sunwing pilots actually earn more than WestJet pilots, even with lower hourly rates. Unifor also notes that the WestJet MEC's economic analysis does not account for the downgrades that Sunwing pilots would experience on the WestJet MEC's proposal. But in any event, citing the *Kaplan Award*, Unifor argues that even if compensation is higher at WestJet, this is not a reason to advantage one group over the other in allocating seniority.

65. In Unifor's submission, there is also no basis on the evidence in this case to conclude that Sunwing was financially precarious, or that WestJet is somehow in superior circumstances. As a private company, it argues, there is simply no line of sight on WestJet's finances (although it does point to certain communications which it asserts demonstrate that the picture is not as rosy as the WestJet MEC asserts, and that WestJet was retreating from the East, with reduced flying and domestic capacity, where Sunwing is strong and where the leisure market presents opportunity for growth).

66. Further, even assuming it were true that Sunwing was financially vulnerable, and WestJet was not, Unifor argues that the financial status of the

merging companies is irrelevant. The real point is that both companies bring value to the merger, and that is the reason the transaction took place at all. The WestJet MEC's perspective, that sees only upside for the Sunwing pilots and downside for WestJet pilots, is deeply flawed and purely tactical. On Unifor's analysis, Sunwing brings more than ample block hours to the merger to justify its complement of pilots, work for which WestJet has acquired additional aircraft, and the WestJet MEC is seeking to reap the benefit of that work at the Sunwing pilots' expense. As the authorities repeatedly emphasize, seniority should be merged to best preserve both parties' positions, not to create winners and loser (See, e.g., *Air Canada* at para. 141).

## **THE FACTORS**

67. As set out in the CIRB decision directing this arbitration, the factors to be considered in arriving at a fair and equitable IPSL include, but are not limited to:

- i) career expectations;
- ii) longevity; and,
- iii) status [Captain or First Officer] and category [Boeing 737 or 787].

The Board does not stipulate any particular weighting of these factors. Rather, they must be applied so that within the context, or factual matrix, of this merger, the IPSL produced is one that is fair and equitable. As both pilot groups acknowledge, a seniority integration arbitration is unlike a typical rights arbitration because it is properly based on a results-orientated analysis; an approach for which a rights arbitrator could often be faulted. It has also been described as more akin to an interest arbitration than a rights arbitration. Further, as will be apparent, the factors are not applied as airtight boxes, but rather are applied in conjunction to arrive at a fair and equitable result in the circumstances of a given case.

### ***Longevity***

68. Longevity refers to a pilot's service with their employer. Longevity is distinguished from strict "date of hire", and calculated as the length of time from date of hire, minus time spent on furlough and some, but not all, other

non-flying time (see, e.g., *First Air "7F" Integration Committee and Canadian North "5T" Integration Committee*, unreported, November 21, 2022 (Crable) ("*First Air*"), *The Pilots of Continental Airlines and The Pilots of United Air Lines*, unreported, September 3, 2013 (Eishchen) ("*Continental*"). Longevity is the primary factor underlying the WestJet and Encore MEC proposals.

69. In one sense, longevity is a straightforward and easily understood basis upon which to balance the seniority rights of merging groups; pilots who have put in their time and worked to maintain and build their company should benefit from that work in greater proportion to those who have invested less. This contribution is often referred to as "sweat equity". Longevity, as distinguished from "date of hire", has been calculated and applied as a factor in integrating pilot seniority lists in several instances under the ALPA merger policy.

70. However, applying the "longevity" factor as stipulated by the CIRB does not preclude using DOH as an input in creating a merged seniority list. Date of hire is integral to and defines the limits of longevity. In giving weight to date of hire, one is necessarily also giving weight to the longevity factor in the aggregate. Further, on the facts of this case, there are several good reasons to use date of hire as the relevant input rather than longevity.

71. First, it must be recognized that date of hire is the basis upon which seniority is determined at both airlines. All other considerations being equal, there is a powerful expectation that longer serving pilots would continue to have the better seniority, and that date of hire would continue to be the measure of length of service. The further an IPSL deviates from date of hire, the more this natural expectation will necessarily be subverted, and the more compelling must be the reason for doing so.

72. Second, there are practical problems with using longevity, as opposed to date of hire, as the relevant input in this matter. The two airlines did not keep the same records, and there appears to be necessary and relevant information that is missing. Absences of a type that may be excluded from longevity on one list, may have been included in the other. It is far from clear how these discrepancies could be resolved, and it would certainly not be possible to resolve them in any timely fashion. As noted at the outset of this award, the IPSL is to be delivered by October 30, 2024 and time is of the

essence. It is the WestJet MEC that proposes to use longevity as a measure, but I find that it has not been able to construct two lists that provide a proper and reliable “apples to apples” comparison.

73. Arbitrator Kaplan confronted this same problem in merging the seniority lists for WestJet and Sunwing flight attendants in *CUPE, Local 4055 v CUPE Local 4070 et al.*, 2024 CanLII 98591 (ON LA) (the “Kaplan Award”). Deficiencies in the longevity information available to him were not the primary driver for Arbitrator Kaplan’s decision to merge the lists based on date of hire. But he identified the same kinds of problems as exist here, and I agree entirely with his conclusion that “[a]n arbitrary and unreasonable approach based on contested assumptions and insufficient information is in no one’s interest, including WestJet” (at p.40).

74. A third problem can also arise, depending on the model of integration adopted, because of the way that pilots will ultimately be assigned to the merged list. Merging lists by longevity, while simultaneously maintaining pilots in their pre-merger sequence *vis a vis* their pre-merger colleagues (as all parties agree is appropriate), can result in undesirable distortions of the list. A pilot who has worked steadily since their date of hire can have their position pushed further down the list by virtue of the fact that a pilot hired just before them happened to have taken a lot of time off. Using date of hire may not perfectly reflect the “sweat equity” contributed by each pilot group, but it avoids creating such distortions and the unfairness that may result.

75. The counterpoint to longevity is “relative seniority”, which is an animating principle underlying Unifor’s proposed IPSL. Maintaining relative seniority means integrating the seniority lists so that pilots from both airlines remain at the same percentile on the seniority list as they were pre-merger. The principle underlying maintenance of relative seniority in the context of airline mergers gets its most full-throated endorsement by the CIRB in *Air Line Pilots Association v. Air Canada et al.*, 2002 CIRB 183 (CanLII)(“*Air Canada/Canadian Airlines*”) at paras 142-43<sup>2</sup>:

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<sup>2</sup> The principle is also endorsed by Arbitrator Burkett in *Air Canada and C.U.P.E. Airline Division*, 2001 CanLII 61972 (CA LA) at page 56, although it must be emphasised that there are important distinctions between pilot and flight attendant seniority integration. Further, and in any event, Arbitrator Burkett did not simply integrate the lists based on relative seniority but rather on a hybrid basis to balance a variety of equities and interests

[141] Generally, the Board is in complete agreement with the above cited ACPA submissions. The objective of the combination of seniority lists should be to leave the pilot, so far as possible, in the same position after the merger of lists as before, with the same value being given to collective agreement rights on the new list as they had on the old one. Length of service in a competitive seniority system, when used to distribute a competitive pool of benefits, is of less relevance than the due preservation of the value of pre-merger rights and resultant benefits. This conclusion is apparently what led Arbitrator Mitchnick to a ratioed list and the Board agrees that in the present circumstances, given the actual facts before it here, date of hire does not make a fair adjustment for the demographic and other circumstances of the merger. In a ratioed solution with the goal of preserving benefits, a year of service is not necessarily to be treated as a year. What is most relevant is the level of benefits given to an employee by their position relative to other employees. The reason for this is that the length of an employee service is only one factor of many that are reflected in an employee's position. Any arbitration under the Code, unless the affected employees otherwise agree, should seek to preserve the relative value of the benefits of the employees, because their work position reflects the trade-offs and choices which they may have already made respecting location of work, education, training, the choice to work for one employer or another and the many other factors that have resulted in that work position. However, it is suggested here, contrary to the ACPA submission, that it is not the value of these benefits in history or prior to the merger based upon a speculative forward view of facts already known to be changed that must govern. Rather, what must be given effect, in view of sections 18.1, 35 and the principles of the Code, is the value of the actual benefits and work situation of the employees as set out in their collective agreements in the relevant circumstances at the relevant time. These benefits, however, only have a meaning in context and care must be taken not only in carefully evaluating work situations and benefits, but also in identifying what time will be relevant to the comparison.

[142] Where as here, at the time the relevant seniority issues came to be considered pursuant to sections 35 and 18.1, certain benefits are clearly provided for in the collective agreements and circumstances, they must be given due recognition by the Board. A failure to do so means a gain not at the expense of the employer, but a windfall gain and an arbitrary loss for the affected employees. Where employees have attained a certain level or position, the integration of seniority lists must strive to protect this and

should not be an occasion for one group of employees to improve their situation at the expense of another group.

[143] In weighing the equities, as must be done in such cases, far greater weight must be given to negotiated rights and the actual situation of those whose seniority rights must of necessity be evaluated, than to a speculative view as to what might have happened or what might happen, but which in fact did not or will not. The arbitral jurisprudence demonstrates that a realistic view must be taken of the value of the benefits and collective agreement rights of each group and that undue speculation forward or backward can lead to unjust results. The benefits that each group possesses at the relevant time and their job rights should be fairly assessed in their context and such benefits and rights, so far as possible, should be preserved to the affected employees.

[emphasis added]

76. On the other end of the spectrum, Arbitrator Horowitz unequivocally rejected relative seniority as a relevant consideration in the context of a merger where the factors of longevity, career expectations and status and category must be applied, in *the Pilots of Alaska Airlines and The Pilots of Virgin America*, unreported, October 11, 2018 (“*Alaska Virgin*”), at p. 16:

Relative seniority, in various guises, involves determining a pilot’s relative position on his pre-merger seniority list and trying to duplicate that position on the merged list. Described another way, if a pilot is at the 50th percentile on the pre-merger list, the goal of relative seniority is to place the pilot at the 50th percentile of the new list. While relative seniority has surfaced from time to time in previous pilot seniority integration arbitration disputes, the concept is not a mandatory factor under the ALPA policy and has not been adopted as a critical factor in any previous pilot seniority list integrations involving major carriers. Relative seniority contradicts the concept of longevity. While the Board considered the relative seniority charts that are part of the record in this case, the Board concludes that relative seniority is not a significant consideration in determining the method for merging the Alaska and Virgin America lists.

77. In my view, it is not maintenance of relative seniority *per se*, as a counter to longevity, that ought to drive the outcome here. The *Air Canada/Canadian* IPSL process did not stipulate consideration of the three factors that I must balance here, and that is a significant distinguishing feature. In the instant case, recognition of the substantially lengthier service brought to the merger by WestJet’s pilots, albeit as represented by date of hire, is an essential consideration in arriving at a fair and equitable IPSL.

78. For example, in this case, a pure ratio model of integration that ignores longevity or date of hire could result in current Sunwing First Officers becoming Captains at five years of service, sitting left of WestJet First Officers who have been waiting years longer for that opportunity. This extensive “leap frogging” would continue until such time as the constructive notice pilots become eligible for upgrades. Similarly, absent erecting excessively long-lasting fences around 787 upgrades, former Sunwing pilots would have a substantial leg up in accessing those future promotions as well.

79. Unifor has sought to mitigate this concern by capping seniority gains at four years. But the modelling of Unifor’s proposal reveals that this would result in the bulk of its non-constructive notice pilots receiving substantial gains in seniority over date of hire, with many at or near the maximum 4-year gain. One can easily understand how a differential between seniority and date of hire, of such a magnitude and across so much of the list, could give rise to widespread resentment within the bargaining unit. Such an approach could not, in my view, be reasonably viewed as an equitable outcome.

80. But it must also be recognized that relative seniority is highly relevant when considering the other factors such as status, category and career expectations, because as emphasized by the Board in *Air Canada/Canadian*, it is a pilot’s relative seniority that determines their current status and future prospects. Put differently, a precipitous loss of relative seniority is likely to result in a loss of status and a lowering of career expectations. It is, in this way, something of a bellwether.

81. Thus, any model that prioritizes longevity to the extent that it dramatically alters relative seniority ought to be scrutinized for its impact on the other equitable factors. In this case, an integration model based solely on longevity or date of hire would most likely result in widespread downgrading of Sunwing pilots from Captain to First Officer, and a corresponding increase in upgrades available to WestJet pilots. It would also drop senior Sunwing pilots into what Unifor describes as the “danger zone”, where they would lose their ability to retain their status as block holders or to hold their base, opening up those beneficial opportunities to WestJet pilots.

82. As discussed further below, I would not find it appropriate to fully insulate pre-merger Sunwing pilots from the prospect of these downgrades. To do so would require the construction of an IPSL that fails to adequately recognize the sweat equity of WestJet's longer-serving pilots, and their investment in building a thriving airline. But it would be equally unfair to construct an IPSL that would effectively award all of the gains accruing to pilots in a post-merger WestJet, to only one pilot group. It must be emphasized: there will be upgrade opportunities at WestJet that would not exist but for its acquisition of Sunwing. It would not be fair to create an IPSL that would effectively ensure that for years, only one group would benefit from these future upgrades, even if that group had greater longevity. I will discuss these gains in greater detail under the career expectations factor.

### ***Category and Status***

#### *Category*

83. Category refers to the type of equipment flown by a pilot. The only category for pilots at Sunwing is the Boeing 737. At WestJet, in addition to a larger fleet of 122 737s, there are also 7 Boeing 787 wide-body "Dreamliner" aircraft. There is no dispute that in constructing a seniority list, both initially and for at least some period following integration, 787 positions should be reserved for pre-merger WestJet pilots.

84. The category distinction between the 737 and 787 is highly consequential, particularly in comparing 737 and 787 Captains. There is substantial overlap between the seniority of 737 Captains and 787 First Officers at WestJet. But upgrading to a Captain position in the wide-body category is typically available to only the most senior pilots, and it is accompanied by a substantial increase in hourly rate.

85. Where a higher-rated category of aircraft is available to pilots at only one of the merging airlines, it is generally recognized that access to positions on those aircraft ought to be reserved, at least initially, for pre-merger pilots from that airline (see, e.g., *New American Airlines Pilot Seniority Integration Arbitration*, unreported, September 6, 2016 (Eishchen) at p.37). In the instant case, both parties recognize that pre-merger Sunwing pilots cannot

reasonably expect to attain 787 positions in the immediate future, but that at some point all pilots in the post-merger entity ought to have access to the same career opportunities.

86. Category protection for a group of pilots can be achieved in two ways.

87. The first way is by virtue of the construction of the IPSL. As the 787 positions, or at least the Captain positions, are typically awarded to the most senior pilots, and given the greater length of service accrued by WestJet's most senior pilots, a list that gives significant weight to longevity or date of hire, or that reserves a significant number of positions at the top for WestJet pilots, will naturally result in the 787 Captain positions remaining available to only pre-merger WestJet pilots.

88. The second way is by the imposition of "fences", i.e., time limited barriers and conditions for accessing these positions.

89. Unifor proposes a 3-year fence around upgrades to 787 positions, during which they would be reserved for pre-merger WestJet pilots. Upon expiration of the three-year fence, for a further period of two years, upgrades to 787 Captain positions for Sunwing pilots would be capped at a ratio of 1:3. The ratio is intended to address the fact that on Unifor's IPSL proposal, over the course of the three-year prohibition on upgrades, a group of senior pre-merger Sunwing pilots who were passed over for upgrades could form at the top of the list. These pilots might then block any pre-merger WestJet pilots from accessing upgrades for a period of time. The use of a ratio for a period of two years is intended to address this potential problem should it materialize.

90. The WestJet MEC's proposals provides for a three year right of first refusal for WestJet pilots for any positions on wide-body aircraft. From a practical perspective, under any of its proposals, this would effectively amount to a fence around 787 First Officer positions. The WestJet MEC's first alternative proposal would place some 444 WestJet pilots at the top of the seniority list. Given that there are presently only 100 787 Captain positions, it is highly unlikely that any former Sunwing pilot would be eligible for a 787 Captain position based on their seniority during the three-year period. On the WestJet MEC's second alternative proposal, the top Sunwing pilot would be

placed at around the 368<sup>th</sup> position, where the prospect of upgrading to a 787 Captain position within 3 years is almost as remote.

91. I will address the relative merits of the parties' proposals below. At this point what I wish to emphasize is that fences, while often necessary, are also often problematic. They are typically premised on assumptions about what is likely to happen the future. In an industry as notoriously volatile as the airline industry, predicting the future is often a fool's errand. As discussed in *Canadian Airlines International Co. and C.A.L.P.A., Re* 1990 CarswellNat 1732 (Monroe), *ad hoc* fences crafted by well-intentioned arbitrators in order to address a perceived equity can have unintended consequences. Further, fences expire whereas the seniority implications of the IPSL will endure (paras. 30-33). In other words, one might solve the immediate problem of 787 positions and near-term upgrades here through the imposition of a fence, but in doing so one must also ensure that the IPSL is one that is fair and equitable in the long term.

### Status

92. The status factor recognizes the desirability of maintaining rank, especially that of Captain. It is this factor that presents the most vexing challenge in this seniority integration. On the facts of this merger, there is an inescapable tension between the status and longevity factors, because pilots typically upgrade at Sunwing approximately 4 years earlier in their career than pilots at WestJet. There are a finite number of Captain positions available, and they are generally available to the more senior pilots. One simply cannot give full weight to one factor without diminishing the other.

93. The parties come to this factor from very different perspectives, which are informed in part by their assessment of the relative career expectations at each airline, and other equities in this matter. I will briefly identify these issues here but will more fully examine them in addressing the career expectations factor.

94. From the WestJet MEC's perspective, Sunwing pilots made a choice when they elected to work for a newer airline that operated in a precarious segment of the industry; they chose the short-term gain of quicker upgrades (and other lifestyle benefits) at the cost of the long-term stability offered by a larger,

more stable mainline carrier like WestJet. The risk of future downgrades that has now materialized in the acquisition of Sunwing by a larger, more operationally diverse and longer established airline, was always part of that calculus. Pilots at WestJet chose opposite priorities and ought not to be disadvantaged now as a result. In other words, attaining status at an immature and unstable airline is not a shortcut to status at a mature and stable airline, where that status has a higher value that necessarily takes longer to earn.

95. Further, from the WestJet MEC's perspective, Sunwing simply does not bring sufficient flying (block hours) to the merger to justify the number of Captains that will be transferring to WestJet. In effect, to maintain the status of Sunwing's excess of Captains will result in blocking upgrades that WestJet pilots reasonably expect to attain themselves through their greater years of service. Further still, the WestJet MEC maintains that the overall superior conditions under the ALPA WestJet collective agreement, particularly its superior monetary terms, will more than make up for any short-term losses due to downgrades. Finally, the WestJet MEC argues, as does the Encore MEC, that any short-term losses may also be mitigated by transition provisions.

96. Unifor takes the polar opposite view. It disputes that Sunwing was anything but a successful and growing airline and argues that it was WestJet that was in retreat, particularly from the East where Sunwing has a strong presence. To the extent that growth at WestJet is anticipated, that growth is arising *because* of the merger. But citing *Air Canada/Canadian Airlines* at paras. 130-35, the *Kaplan Award* at pp.34-35 and the decision of Arbitrator Burkett in *Air Canada and C.U.P.E. Airline Division (Re)*, 2001 CanLII 61972 (CA LA) at p. 157 ("*Air Canada CUPE*"), Unifor argues that the relative financial health of the airlines ought not to be an influential consideration in any event.

97. Further, from Unifor's perspective, Sunwing brings an excess of flying to the merger that more than justifies its number of Captains. This is flying that WestJet pilots would not have access to but for the merger. And rather than crediting any of this new equity to the Sunwing pilots, the WestJet MEC seeks to reap all the benefit for itself.

98. Neither, Unifor argues, do the benefits available under the ALPA WestJet collective agreement justify a loss of status. Historically, Sunwing pilots, on

average, have earned more than WestJet pilots on a years of service basis. To the extent that hourly rates at WestJet are higher, that is a function of the timing of collective bargaining. It is a gap that Unifor would have expected to close had it been able to bargain its next collective agreement in the usual course, just as Air Canada's pilots have recently achieved.

99. From Unifor's perspective, an equitable seniority list ought to minimize winners and losers, or windfalls and losses, so that to the greatest extent possible pilots continue to enjoy the same rights and expectations that they enjoyed prior to the merger (see *Air Canada Pilots Assn. v. A.L.P.A.*, 2003 CarswellNat 292 (Keller)). In Unifor's submission, any IPSL that fails to maintain the status of its Captains would result in an unwarranted windfall of upgrades for WestJet pilots, while Sunwing pilots would experience a corresponding loss of relative seniority and downgrades.

100. I will address the parties' arguments on these issues further under the career expectations headings. As will be apparent, however, it is my view that the impact of status on the construction of a fair and equitable IPSL is greater than accorded by the WestJet and Encore MECs, but substantially less than accorded by Unifor.

### ***Career Expectations***

101. The factor of career expectations is somewhat nebulous and has been relied upon to account for a variety of considerations in different mergers. These include a pilot's expectations with respect to wages and future earnings, working conditions and lifestyle, perquisites, prospects for future advancement, fleet growth and the near and long-term viability of the airline. Career expectations are something of an equitable "catch all" and are not easily quantified. The application of this factor is complicated by the fact that while grounded in the current and pre-merger circumstances of each airline, career expectations are nonetheless forward looking. Forecasting in the airline industry is notoriously difficult. The challenge is aptly described in *Northwest Airlines and Delta Air Lines Pilots*, unreported, December 8, 2008 (Bloch):

On the one hand, dealing with the future prospects of anything in the airline industry is nothing short of reading tea leaves or, to cite a far more daunting venture, predicting fuel prices. On the other hand, those sorts of

assessments are the stuff of which “career expectations” are made. Therefore, it is appropriate that one examine possibilities and potentials to whatever extent is reasonable, in the course of constructing a merged seniority list that is fair and equitable. A brief comment on that merger standard is in order. By employing concepts of both fairness and equity, the drafters of the ALPA Merger Policy recognized a dual standard that should serve to inform the judgment of those constructing a merged list. An integrated list that responds solely to statistical absolutes (for example), with no broader view of the short and long-term impact on career expectations, might be considered nominally fair but realistically inequitable. Too, a process that ignores reality and bypasses facts, that pursues, instead, an illusory notion of “something for everyone,” could hardly be fair. In constructing this list, we have inquired as to where the respective groups have been and we have made reasoned judgments as to where they were going. We have attempted, at all times, to recognize reasonable expectations of both parties while, in all instances, rejecting proposals that, however facially logical, resulted in untenable windfalls.

102. In this case, the primary expectation upon which Unifor relies is the maintenance of the pre-merger career trajectory of the Sunwing pilots. This expected trajectory includes access to quicker upgrades, and the ability to maintain that status going forward. In its materials, Unifor plots out, year over year, how a pilot will progress through the ranks as more senior pilots retire and as the remaining pilots move up the seniority list. By Unifor’s calculation, the WestJet MEC’s proposals will result in between 498-619 “Captains years lost” between 2025 and 2034. Its own proposal, it argues, would also result in a relatively small number of Captains years lost, but would do far more to protect the career trajectory of its pilots and prevent the loss of status for Sunwing’s current Captains.

103. From Unifor’s perspective, Sunwing pilots also enjoyed significant and beneficial terms and conditions of employment at the pre-merger airline. These include what is described as “lifestyle” flying to vacation destinations, access to summer vacations, European deployments, and the availability of overtime, all of which are highly valued by Sunwing pilots.

104. In contrast, the WestJet MEC argues that the career expectations of its pilots are vastly superior to those at Sunwing, based on the relative strength of the two airlines.

105. First, it argues that the winter vacation business model on which Sunwing operates is simply not viable. Inefficient “lifestyle” flying may be attractive to Sunwing’s pilots, but there is a legacy of failed Canadian leisure carriers that belies the long-term viability of this business model. In the WestJet MEC’s submission, where there is a real prospect that an airline might fail, there is a corresponding career expectation that a pilot may need to begin anew at a different airline, where they will start at the bottom of the seniority list. In the WestJet MEC’s submission, this trade-off is in fact reflected in the will-say statements filed on behalf of the Sunwing pilots. In focussing on only the positive elements of this trade-off, Unifor fails to accurately reflect the true career expectations of Sunwing pilots, which includes the real prospect that the airline will fail or will be acquired by a larger longer-established airline. In either scenario, pilots should not expect to maintain a relative seniority that would not be available in the context of a more secure and established airline.

106. Further, the WestJet MEC argues that the risk of Sunwing’s failure was not an abstract or remote prospect; the airline was rather on the precipice of failure until it was rescued through acquisition by WestJet. According to the WestJet MEC, Sunwing emerged from the Covid 19 pandemic burdened with substantial debt that it could not pay. Sunwing’s vulnerability as a going concern was explicitly recognized in the Order of the Governor in Council approving the merger under the *Transportation Act* (P.C. 2023-210), which referenced this debt and further operational challenges faced by Sunwing in the 2022 winter holiday season and concluded that “[i]n the absence of the Acquisition, Sunwing’s ongoing viability in the market would be in jeopardy”. The Order also reflects that a major consideration in the Minister’s recommendation to approve the merger was that the acquisition “would prevent the imminent threat to Sunwing’s financial viability and possible exit from the market.”

107. In contrast, WestJet’s position in the market and prospects for growth, the WestJet MEC argues, are far stronger. Unlike Sunwing, it weathered the pandemic by virtue of its strong balance sheet, and without reliance on government assistance. It has emerged in a growth phase, with a substantial number of aircraft on order. There is every reason to believe, in the WestJet MEC’s submission, that all pilots will benefit from this growth, and that the

career expectations of Sunwing's pilots will be enhanced upon transfer to WestJet.

108. In response, in addition to maintaining that the relative financial health of the two airlines is irrelevant, Unifor emphasizes that there is a complete lack of actual evidence to support the conclusion that Sunwing was not a viable company. Neither, given that WestJet is a private company, is there any transparency around its own financial circumstances. This lack of transparency distinguishes this case from the merger cases cited where relative financial health was considered, which involved public companies and available, reliable financial information.

109. In addition to attaining long-term enhancements to career expectations at WestJet through integration into a larger more stable airline, the WestJet MEC also argues that the terms of its collective agreement offer substantial enhancements that more than offset any change in career trajectory.

110. The WestJet MEC's materials include an expert report prepared by Kroll Canada Ltd. (the "Kroll Report"), assessing the career expectations and cumulative earnings of pilots at the two airlines. The Kroll Report concludes that the present value of the cumulative career earnings differential for the 503 Sunwing pilots is in the order of \$874.9 million dollars. In other words, from a financial perspective, the impact of delayed promotion to the status of Captain is more than offset by medium and long-term financial gains.

111. Unifor counters that this financial analysis is based on the flawed assumption that wages at Sunwing would not have caught up once Unifor had an opportunity to bargain. It would not be proper to base career expectations on arbitrary differences in the collective bargaining cycles of the two parties. The WestJet MEC also fails to account for the fact, as illustrated by the 2023 T-4 data, that Sunwing pilots already earn more on average, on a years of service basis, than pilots at WestJet. Given the lengthier service of the average WestJet pilot, it is not surprising that average salaries across the whole bargaining unit would be higher; WestJet has more pilots occupying higher positions on the wage grid. The better analysis, argues Sunwing, is to compare the income of pilots at comparable stages of their career with the airline, and on that measure the Sunwing pilots come out ahead.

112. The WestJet MEC also points to several features of its collective agreement which it argues further enhance the equities in favour of maintaining date of hire seniority. As previously noted, the ALPA WestJet collective agreement provides for movement up both the First Officer and Captain's wage grid based on years of service. At Sunwing, upon promotion, pilots start at the bottom of the Captain's wage grid. As a result, the impact of short-term downgrades or delayed promotions is mitigated by higher wages once the rank of Captain is attained. The ALPA WestJet collective agreement also contains superior pension, profit share and stock option, and scope and layoff protection provisions. Further, as a result of the ALPA WestJet socialized bidding and vacation provisions, it is unnecessary to adjust seniority to maintain any career expectation in respect of these important terms of employment. At WestJet, junior pilots will have greater access to favourable bidding and vacation in relation to their senior colleagues than would Sunwing. Assigning additional seniority to Sunwing pilots beyond their date of hire is neither a necessary nor effective means of maintaining career expectations in relation to these rights.

113. Finally, as noted under the status heading above, the parties join issue over the volume of block hours that will accrue to WestJet because of the merger, and whether this is an equity that ought to militate in favour of one group or the other.

#### *Assessment of Career Expectations*

114. In assessing the parties' positions, I will first address the issue of the relative financial health of the two airlines. This issue was discussed in the *Kaplan Award*, which provides a useful starting point for my analysis. Arbitrator Kaplan, in essence, reached two conclusions. First, he found that while the evidence before him was limited, the same terms of the Order in Council that I have cited above did support the conclusion that Sunwing was in "serious trouble" and was "rescued by WestJet". But second, he also found that in determining seniority, this fact really did not matter (p. 34).

115. Arbitrator Burkett reached the same conclusion in *Air Canada CUPE*, cited by Arbitrator Kaplan, finding that to the extent possible, "employees who have little control over the events that precipitate business mergers, ought to

be saved harmless from any detrimental impact upon the real value of their seniority” (at 161). Arbitrator Kaplan synthesized that award and others as follows (at p. 35):

The interests of one (stronger) group should not be preferred based on viewing the merging/consolidating companies as either winners or losers. This is not, in my view, an “equity” that would justify skewing the ISL in favour of 4070 or, as 4070 would have it, to dramatically prefer their interests over those of 4055 members. It is noted, as well, that there are no provisions in either collective agreement that would permit premerger/consolidation economic circumstances to devalue or diminish anyone’s seniority.

116. I take no issue with Arbitrator Kaplan’s assessment or his synthesis of the applicable principles. But his findings must also be understood within the context of the case that was before him. When Arbitrator Kaplan held that Sunwing’s precarious financial circumstances was not a basis for skewing the ISL, he was addressing the argument, made on behalf of the WestJet flight attendants, that the seniority of the Sunwing flight attendants ought to be truncated to be less than what they would expect under their collective agreement, i.e. less than their date of hire. The WestJet flight attendants had proposed a longevity model. Arbitrator Kaplan rejected Sunwing’s financial precarity as a basis for awarding that proposal as follows (at p. 34):

Accordingly, and on the one hand, what evidence there is establishes that Sunwing was in serious trouble. Local 4070 [the WestJet flight attendants] is undoubtedly correct that it was rescued by WestJet. But on the other, none of this really matters. How could it possibly be that earned seniority in a merger/consolidation situation is reduced simply because one’s employer was no longer financially viable? On the limited evidence before me – the Order in Council – one can conclude that the Sunwing situation was dire. One cannot be oblivious to that, but it is a leap to then decide that as a result 4055 members [the Sunwing flight attendants] should have their seniority truncated. One cannot readily conclude that it would be justifiable to say to a group of employees that notwithstanding provisions in their collective agreement, their seniority – which they earned – will now be adjusted downwards on a merger/consolidation because of the happenstance of their having had the misfortune to work for a less successful airline.

117. Arbitrator Kaplan similarly found that the superior terms and conditions of the WestJet collective agreement also did not provide a basis for truncating the seniority of the Sunwing flight attendants (p.35). But neither did the equities justify integrating the lists on a relative seniority basis as proposed by the Sunwing flight attendants; a proposal that is more akin to Unifor's proposal here. Looking to demographics of the WestJet and Sunwing flight attendants, he found that the facts that justified Arbitrator Burkett's decision to depart from date of hire integration, to the extent that he did, in *Air Canada CUPE*, were not present in the case before him (pp.36-37). On balance, Arbitrator Kaplan found that maintaining both parties' seniority based on date of hire recognized the long service accrued by the WestJet flight attendants, while maintaining the Sunwing flight attendants' expectation that they would retain the seniority they had accrued, as they had accrued it, under their own collective agreement.

118. Unlike the present case, however, Arbitrator Kaplan was not required to apply the three factors of longevity, status and category and career expectations. That is a significant distinguishing feature that must be recognized. Indeed, Arbitrator Kaplan explicitly acknowledged the difference between flight attendant and pilot seniority mergers in his award, especially the "crucial" status distinction between Captain and First Officer (at pp.41-42).

119. In the instant case, absent the status issue and the associated issues of upgrades, downgrades and career trajectory, I would have no hesitation in arriving at the same conclusion as did Arbitrator Kaplan.<sup>3</sup> There would be no reasonable basis, in my view, for placing the Sunwing pilots at anything more or less than the position they would have earned under either party's collective agreement. It would not be equitable, in my view, to effectively punish the Sunwing pilots because of the precarity of their employer, or to reward them with years of service they did not earn. As with the flight attendant groups, I find there are no demographic issues as between the pilot groups that are akin to the circumstances before Arbitrator Burkett in *Air Canada CUPE*. Further,

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<sup>3</sup> I note that to the extent that there was a "status" issue in the flight attendant merger related to the CSMs, this was not akin to the circumstances in the instant case. Unlike the Sunwing CSM positions, which are not available on WestJet's 737s, Captain and First Officer positions exist in precisely the same manner at both airlines, and the distinction will continue to be highly relevant going forward.

absent the status and associated issues, arguments for relative seniority would be even less persuasive having regard to the socialized bidding and vacation models under the ALPA WestJet collective agreement. As the WestJet MEC argues, to the extent that former Sunwing pilots wish to continue winter vacation flying, the preferential bidding system will allow them to pursue that flying irrespective of their seniority.

120. But in the context of a pilot merger, where it *is* necessary to balance the three factors, the impact on status necessarily looms large, including as it relates to the career expectations of Sunwing pilots who would be downgraded or who may face a longer wait for upgrades.

121. There is a difference between discounting or truncating seniority because of the financial circumstances of a merging airline, and recognizing that as a career expectation equity, one airline may offer greater security of employment than another. I agree with the WestJet MEC that when a pilot joins a smaller, less established, niche airline that offers rapid upgrades, as opposed to a larger, more established and diverse mainline carrier, they are making a choice that includes favouring rapid progression at the potential cost of longer-term stability.

122. The relationship between faster upgrades at a newer airline, versus long-term stability at a more established airline, as career expectation equities, is well summarized by Arbitrator Horowitz in *Alaska Virgin* (at p.15):

Turning to upgrade expectations, the second component of career expectations, the Board concludes that the expectations of both groups were good, with the Virgin America pilots experiencing, at least for a few years, a faster upgrade rate than Alaska pilots. Virgin America's fleet grew steadily over its existence, even when the carrier was losing money. While that fleet growth was not always as aggressive as the airline projected, it offered career expectation advantages for its pilots. As a result of that expansion, Virgin America's pilots upgraded from First Officer to Captain in approximately five years, a very favorable progression compared to Alaska (where promotion took about 12 years) and other airlines.

Because upgrading from First Officer to Captain carries such a significant increase in pilot pay, the length of time that it takes to upgrade to Captain

is a very important equity to be considered in striking a fair and equitable seniority list. The length of time it takes to upgrade is driven by many variables, including fleet growth, increased fleet utilization, attrition and other factors. The much faster time to upgrade is therefore an important equity for Virgin America's pilots. That equity is diluted, to some extent, by the likelihood that Virgin America would not have continued to grow at the same rate as in its early years as a carrier.

When job security and upgrade opportunities are taken together, the career expectations for pilots at both airlines were good, but those of the Alaska pilots were better, more secure and more predictable. A standalone Virgin America might have continued as a viable and growing competitor, or it might have faltered, or it might have merged with or been acquired by another carrier that could have been less advantageous to Virgin America's pilots. Alaska was more likely to have continued its steady if slower growth.

123. The WestJet MEC argues that the circumstances in the instant case align with the circumstances in *Alaska Virgin*. Its second alternative model is similar to the 60/40 longevity/status and category model adopted in *Alaska Virgin*, but weighting adjusted to reflect the use of date of hire, which is more favourable to the Sunwing pilots. I agree that there are similarities between the instant case and *Alaska Virgin*. But I am loathe to place much weight on this consideration given the volatile nature of the industry more broadly, and the previously noted folly in making assumptions about the future prospects of one airline over another (see *Air Canada Pilots Assn. v. A.L.P.A.*, 2003 CarswellNat 2292 (Keller) at paras 8-10).

124. What I do take from the *Alaska Virgin* case, however, is the principle that any equity attributed to the prospect of quicker upgrades must be tempered by the prospect that as an airline matures, as growth plateaus, or as market conditions change, one cannot reasonably expect that future upgrades will necessarily continue to occur at such an accelerated pace. That is a tenuous expectation, just as it was for pilots who joined WestJet in its early days. Further, there is nothing in the materials before me to suggest that Sunwing was in a growth phase, as there does exist for WestJet. To the extent that rapid upgrades at Sunwing can be attributed to a higher rate of turnover, that is hardly an indicator of long-term employment stability. Thus, while I accept that rapid upgrades are a career expectation equity that Sunwing pilots

bring to the analysis, I do not find that it is one that would justify leapfrogging Sunwing First Officers years ahead of their WestJet colleagues.

125. There is also, in my view, a difference between the career expectations of a pilot that has achieved and is well-entrenched in a Captain position, as are Sunwing's more senior Captains, and a First Officer with only a few years of service who has not yet achieved that rank. The former can reasonably expect, to the extent possible and having regard to all the factors, to maintain what they have earned. The latter cannot reasonably expect that they will necessarily follow the identical trajectory.

126. Significant focus was also placed by the WestJet MEC on the alleged lack of flying, and the corresponding excess of Captains, that Sunwing brings to the merger. By the WestJet MEC's calculation, following significant back and forth and the provision of additional information by the Company, Sunwing brings sufficient block hours to the merger to require approximately 197 Captains, not the approximately 245 Captains currently employed at Sunwing. Not included in this calculation is the flying that is currently being performed by WestJet for Sunwing through wet leases.

127. In contrast, Unifor looks at the total volume of flying arising from Sunwing's business, all of which is expected to be flown by WestJet post-merger and calculates that it will require an average of 25.3 planes per year. Further, because the flying that Sunwing brings is generally on international routes, Unifor's calculation uses a higher ratio of pilots to aircraft than does the WestJet MEC. The WestJet MEC's calculations are based on the WestJet norms, which in turn are influenced by the fact that it does significant domestic short haul flying. By Unifor's calculation, looking to other mainline international carriers, Sunwing's flying requires a complement of 532 pilots. This is more than the 496 pilots it brings to the merger and more than enough to justify its 245 Captains.

128. I accept that were it the case that Sunwing brought significantly more pilots than work to the merger, this would be an equitable consideration meriting some weight. Where an airline is truly overstaffed, one would expect layoffs and downgrades to follow. It would hardly be equitable to subvert the career expectations of WestJet pilots with downgrades or delayed promotions in that circumstance. But those are simply not the facts before me.

129. Post-merger, the only flying that was done by Sunwing pre-merger, whether using its own aircraft, dry leased aircraft or through wet leases, that will no longer be performed post-merger, is the European deployments. This is a significant volume of work, without which it would not have been possible to fully employ the current complement of Sunwing pilots. There will also likely be some efficiencies realized by integrating the Sunwing flying into WestJet's substantially broader network. These are legitimate considerations.

130. But in my view, the equities must be assessed in the broader context of the merger. I acknowledge, as WestJet/Sunwing submits, a distinction between Sunwing the airline, and Sunwing Vacations. Nonetheless, it would be highly artificial to integrate the seniority lists as though the block hours accruing to WestJet from the merger did not include all of the flying that it will perform as a result of the broader transaction.

131. The WestJet MEC discounts these block hours to exclude the hours flown by the WestJet aircraft now operating as wet leases for Sunwing. Yet that is not flying that WestJet did prior to acquiring Sunwing. This new work, indeed, all the flying that Sunwing has traditionally done by wet lease, and WestJet's ability to balance its operations by augmenting its winter flying when it has traditionally been less busy, is part of the "win-win" that is intended to arise from the merger. WestJet did not "rescue" Sunwing out of beneficence; it acquired the airline together with the Sunwing Vacations book of business so that it could grow and strengthen its own operation. Ending the practice of wet leasing from European carriers and bringing all that work in house at WestJet was a condition of the Order in Council approving the merger, and one would expect that this will result in more flying than Sunwing has previously done with its own pilots. In my view, this is not an equity that favours either pilot group. Rather, if the outcome of the merger is as intended and anticipated, the additional flying brought to WestJet through its acquisition of Sunwing should benefit all pilots. In this light, the Sunwing pilots alleged deficit of block hours is not an equity that militates in favour of the WestJet pilots.

132. I do find, however, that expected wage progression under the respective collective agreements is a relevant consideration. The potential for downgrades facing Sunwing pilots on any of the WestJet MEC's proposals is

properly viewed as a set-back to career expectations. But as the WestJet MEC argues, that loss will be mitigated to a significant degree, especially when downgrades are short-lived, by more rapid advancement up the Captain's grid in the future.

133. I also find that the generally superior monetary terms under the ALPA WestJet collective agreement are a factor. I accept, as Unifor argues, that one ought to be careful in comparing the collective agreements given the different bargaining cycles. I would not assume that either collective agreement would remain as they are into the future. But neither would I assume that the pilots at Sunwing, an airline that was at significant financial risk, could reasonably expect to automatically catch up to the WestJet pilots in the next round of bargaining. As the Kroll Report illustrates, at present, the WestJet pilots have achieved superior monetary terms under their collective agreement. Sunwing pilots will benefit from these terms. This enhancement to career expectations will assist in offsetting the losses that might arise from any temporary loss of status or delayed upgrades.

134. I have also considered Unifor's argument that when compared on a years of service basis, its pilots have historically earned more than WestJet's. I agree that viewed through this lens, the WestJet MECs bargaining unit-wide average income analysis does not provide a fair or accurate comparison. But the additional income earned by Sunwing pilots arises from overtime opportunities that are available by virtue of Sunwing's business model. It is difficult to see how this is an equity that should be recognized through enhanced seniority, in the context of a post-merger airline that does not operate that way.

135. I have considered Unifor's "lost captain years" modelling in assessing career expectations. But I do not find that this analysis, which is based on highly artificial assumptions, to be particularly compelling. It assumes no growth or attrition other than normal retirements. It is built on assumptions about how pilots will exercise their seniority that do not accord with real world experience. Most troubling from my perspective, for Unifor's modelling of downgrades and lost captain years to be remotely predictive, there would need to be a dramatic increase in the time it takes for upgrades to occur at WestJet post-merger. Unifor has not identified anything in the evidence before me to explain why such a dramatic shift would occur. I do not purport to predict the

future of upgrades at WestJet. But I see no justification for building a seniority list, to the benefit of one group over the other, based on a worst possible case scenario for which there appears to be no reasonable real world factual foundation.

136. Finally, I also note that any loss of status or career expectations arising from downgrades can be somewhat mitigated through the implementation of appropriate transition provisions, which I will address next.

### **Pilot Transition Process**

137. An IPSL is typically delivered in conjunction with the terms for transitioning pilots to the merged entity, often in the form of a pilot transition agreement, or “PTA”. These terms are integral to the seniority merger process, because they help to address, and smooth over, the immediate disruption that could otherwise occur with the delivery of a new seniority list. Absent such an agreement, an IPSL that is otherwise fair and equitable could have immediate consequences that appear to be anything but fair, at least in the short term. Such short-term transitional interests are better dealt with in a PTA than through baked-in alterations to the IPSL.

138. In this case, the parties were not able to reach a final agreement on a PTA, and it is therefore necessary that I order certain transitional terms in order to fulfil my mandate in delivering an IPSL that is fair and equitable. This will be referred to as a Pilot Transition Process (“PTP”)

139. Among the most common, indeed normative, provisions in a PTP is a “no bump/no flush” provision. In this case, ALPA, in anticipation of WestJet acquiring Sunwing, bargained the following Article 1-2.04:

1-2.04. In the event a Corporate Re-Organization results in the Company acquiring another airline that operates jet aircraft larger than 76 Seat Jet Aircraft, the following transition guidelines shall apply during the post-closing phase of that commercial transaction:

...

- e) Any merging of the pilot seniority lists through negotiation, mediation, or arbitration shall not directly result in any flush/bump of Equipment/Type Status or Home Base scenarios for any Pilot within

twelve (12) full Monthly Scheduling Periods from the Operational Integration Date in accordance with Section 1-2,05 below;...

140. The ALPA WestJet collective agreement also includes the following layoff protection in Article 1-2.07:

1-2.07. In the event a Corporate Re-organization result in the Company acquiring another airline that operates jet aircraft larger than 76 Seat Jet Aircraft, the Company shall ensure that no Pilot shall, as a direct result of the Company's acquisition of that other airline, be placed on layoff for a period of two (2) years from the Operational Integration Date. For clarity, no Pilot shall be placed on layoff as outlined in this Section 1-2.07 except in circumstances as outlined in Section 20-1.05.

141. I have concluded that in order to create a level, i.e. fair and equitable, foundation for an IPSL, it is necessary to extend these protections to the pre-merger Sunwing Pilots, along with several other reasonable and normative transition provisions that will facilitate the implementation of an IPSL while minimizing the immediate disruption experienced by pilots in both groups.

142. I have also concluded that it is appropriate to extend the no-bump/no flush protection for both parties to include status (referred to as rank under the WestJet collective agreement). As addressed throughout this award, status is for many pilots the single most critical seniority-based collective agreement entitlement. Time-limited rank protection is the norm in pilot seniority mergers. It is necessary to mitigate the inevitable negative impact of merged seniority on at least some pilot's ability to hold their rank.

143. I note that as a form of "fence", time limited rank protection does not fully address the "status" factor. It is not a substitute for the establishment of an IPSL that properly balances the three factors, including status and any other equitable considerations, and that will endure as a fair and equitable outcome. Rather, no bump/no flush protection is intended to assist in mitigating the harshest and most immediate consequences of an IPSL that is *otherwise* fair and equitable. Put differently, it is a measure intended to help avoid, rather than promote, distortion of the list.

144. The PTP is included in Schedule "A" to this award.

**THE IPSL**

145. Having regard to my assessment of the factors and equities as set out above, I find that the following modified version of ALPA's Alternative Proposal #1 produces a fair and equitable IPSL:

- 1. Constructive Notice Pilots-All pilots hired at Sunwing and WestJet following the constructive notice date of March 2, 2022 will be placed at the bottom of the IPSL in accordance with their date of hire.
  
- 2. The most senior Sunwing Pilot shall be placed at position 316 of the IPSL.
  
- 3. The remaining pre-constructive notice pilots are ratioed.

Conditions and Restrictions

- 4. WestJet pilots have right of first refusal for any Positions on a wide body aircraft (e.g. B787) for a period of three years from the Operational Integration Date (Nov 1, 2027).

146. In my view, there are several features of this model that are responsive to the considerations set out in my review of the factors.

147. First, there are currently approximately 222 positions available on WestJet's 787 widebody aircraft, 100 of which are Captain's positions. With the top 315 positions on the IPSL reserved for WestJet Pilots, this model would obviously ensure that longer serving WestJet pilots retained those Captain positions. But it would also ensure that absent significant expansion of the 787 fleet, future promotions to 787 Captain positions would continue to remain the exclusive purview of pre-merger WestJet pilots. This category protection can reasonably be expected to endure well past the expiration of the three-year fence, appropriately reflecting the limited number of these opportunities available, the time it takes WestJet pilots to earn them, and the fact that positions aboard these aircraft do not form part of expected career

trajectory for Sunwing pilots. It will also eliminate the need for any additional fences, such as ratioed promotions, since there is unlikely to be any bunching of passed-over Sunwing pilots at the top of the list during the period of the fence.

148. Position 316 is the mid-point between the date of hire of Sunwing's most senior pilot, and the 222 spaces attributable to the 787 fleet. This placement will fall well short of maintaining relative seniority for Sunwing pilots. It is a precipitous drop from the top position among 737 Captains at one airline, to position 316 on the IPSL at another (or 216 among 737 Captains). On a ratio model, loss of relative seniority will flow down the list from there.

149. But this placement nonetheless reflects the fact that for the more senior Sunwing pilots, neither their longevity position ascribed by the WestJet MEC, nor their date of hire adequately reflects their status and their legitimate career expectations. The pilots who will gain the most seniority over date of hire under this model are those whose pre-merger seniority afforded them strong career expectations, including the ability to maintain rank, base and status as regular block holders.

150. In assessing the impact of constructing a ratio model based on the placement of the most senior Sunwing pilot in this case, I note that it does not have a uniform effect up and down the list. This is not uncommon in pilot seniority integration cases. As is apparent in reviewing the parties' analysis of prior mergers, there are often anomalies and idiosyncrasies, frequently arising from the timing of hiring at one airline or the other, or the impact of prior mergers. In this case, the ratio model results in especially significant seniority gains over date of hire for the Sunwing pilots hired in and around 2011/2012, a period that followed several years when Sunwing did not hire. This is also a feature of the WestJet MEC's first alternative proposal, albeit to a lesser degree. What I wish to emphasize is that these are pilots who bring strong career expectations to this merger, with sufficient date of hire seniority to hold captain positions at either airline.

151. Further, on this integration model, as one moves down the list, seniority gains for Sunwing pilots will generally diminish. Of particular importance, there is nothing in the analysis provided to me to suggest that any existing WestJet Captain is likely to experience a downgrade as a result of

implementing this model. Neither is there any reason to conclude that existing WestJet First Officers will be delayed in attaining promotions. As discussed above, the WestJet MEC's submission to that effect is based on a flawed representation of the block hours that Sunwing brings to the merger.

152. Conversely, it is likely that some, perhaps many, current Sunwing Captains who are regular block holders will drop into what Unifor terms the "danger zone". Whether Sunwing pilots who were Captains as of the date of this award will actually suffer downgrades is far less clear. As discussed, I do not find Unifor's "worst case scenario" analysis compelling. The transition provisions awarded will certainly reduce this likelihood, and much will depend on WestJet's circumstances and how it chooses to proceed when those transition provisions expire. But in any event, it is my assessment that the seniority enhancements that Unifor seeks in order to guard against these potential losses would ascribe far too much weight to the status and career expectations of the Sunwing pilots, to the almost complete exclusion of recognizing the superior longevity interests of the WestJet pilots.

153. It is also the case that all other things being equal, it will take longer for many existing Sunwing First Officers to attain promotion to Captain positions at a post-merger WestJet. But I have found that the expectation amongst these pilots for ongoing rapid advancement is a tenuous one. I have also found that the impact of delayed advancement is mitigated to a reasonable degree by the superior provisions of the ALPA WestJet collective agreement, particularly as it provides for advanced placement on the Captain's grid upon promotion.

154. I note that I have not awarded a fence around access to Reduced Block Program Positions. Differential treatment of pilots post-merger should be limited to only those areas where it is necessary in order to establish a fair and equitable IPSL. Neither have I awarded Reinstatement Rights as sought by Unifor. In my view, the construction of the IPSL and the terms of the PTP in combination strike the correct balance. No further intrusion into the normal operation of seniority under the Collective Agreement is warranted.

## **CONCLUSION**

155. For all these reasons I order that the IPSL shall be constructed in accordance with the rules set out in Schedule "A", including the terms of the PTP set out therein.

156. I remit the population of the list to the parties and remain seized if they are unable to agree.

Dated at Toronto, Ontario, this 30<sup>th</sup> day of October, 2024.

*"Eli Gedalof"*

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Eli A. Gedalof  
Sole Arbitrator

## **SCHEDULE "A"**

### **IPSL RULES**

1. Constructive Notice Pilots-All pilots hired at Sunwing and WestJet following the constructive notice date of March 2, 2022 will be placed at the bottom of the IPSL in accordance with their date of hire.
2. The most senior Sunwing Pilot shall be placed at position 316 of the IPSL.
3. The remaining pre-constructive notice pilots are ratioed.

#### Conditions and Restrictions

4. WestJet pilots have right of first refusal for any Positions on a wide body aircraft (e.g. B787) for a period of three years from the Operational Integration Date (Nov 1, 2027).

## **PILOT TRANSITION PROCESS**

### **Section 1 – General**

#### **1-1 Preliminary Items**

1-1.2. [Deleted]

1-1.2. Notwithstanding 1-3 Association Flight Release, no part of this transition process shall result in any changes to the terms of the WestJet CA2. Measures to protect the seniority of Pilots that do not materially increase the cost to the Company or adversely impact the rights of the Company to manage operations are not considered changes to the terms of the WestJet CA2.

1-1.3. No Sunwing pilot shall be transferred to WestJet prior to their assigned WestJet Report Date.

- 1-1.4. In addition to the Section 1-2.04(e) protections in WestJet CA#2, in effecting the merger of the pilot seniority lists, Rank will also be protected for the twelve (12) full Monthly Scheduling Periods commencing the November 1, 2024 Operational Integration Date.
- 1-1.5. The Companies agree to provide the same protections to Sunwing Pilots as are entitled to WestJet Pilots under Section 1-2.04(e) of WestJet CA2, with the exception that Sunwing's Quebec City Base will close and all Sunwing Pilots at Quebec City Base will be assigned to WestJet's Montreal Base.
- 1-1.6. Sunwing pilots shall be granted the same protections as WestJet pilots under Section 1-2.07 of WestJet CA2 from the date of the delivery of the IPSL.
- 1-1.7. The Operational Integration Date shall be November 1, 2024.

## **1-2 Transfer of Employment**

- 1-2.1. The Companies shall assign a WestJet Report Date to each Sunwing Pilot. The Sunwing Pilot's employment relationship with Sunwing shall be transferred to WestJet and their employment considered continuous with WestJet from their Sunwing date of hire through their assigned WestJet Report Date. Acknowledgment of transfer and continuous service in this transition process is not a resolution of nor does it inform the issue of the interpretation and application of section 21-4.01 to the retroactive service recognition of Sunwing Pilots upon their transfer to the WestJet bargaining unit (as referenced by the CIRB in paragraph 5a of its July 30, 2024 Order). If disputed, this may be addressed as a grievance.
- 1-2.2. In accordance with the CIRB Order, the WestJet Report Dates and associated training dates for Sunwing Pilots may be assigned outside of seniority order. A Sunwing Pilot's assigned WestJet Report Date and associated training dates may be changed by the Companies.
- 1-2.3. Upon the initial transfer of employment to WestJet, a Sunwing Pilot shall be assigned the same Base and Rank at WestJet as they held upon the transfer of their employment from Sunwing.
- 1-2.4. Sunwing Pilots shall be advised of their assigned WestJet Report Date by email to their Sunwing email address prior to the commencement of the Sunwing Integration Vacation Bid, as set out in Section 3-1 below.

## **1-3 Association Flight Release**

- 1-3.1. WestJet shall, on a one-time basis, provide ALPA with additional AFR hours. The amount of AFR hours to be provided shall be equal to the number of residual time bank credit hours remaining in Unifor's union time bank with Sunwing as of the dissolution of the Unifor.
- 1-3.2. An additional one thousand two hundred (1200) hours of AFR shall be added to the four thousand five hundred (4500) hours contemplated in Section 5-4.01 on an annual basis commencing on January 1, 2026. This brings the total company allocated bank of AFR up to five thousand seven hundred (5700) hours per year. For the 2025 calendar year, WestJet shall add an additional allotment equivalent to one hundred (100) hours of AFR for each full calendar month following the first pilot from Sunwing transferring to WestJet in accordance with their assigned WestJet Report Date.

## **Section 2 - Definitions**

- 2.1. All definitions are in accordance with WestJet CA2 unless noted below.

**Airline.** Either Sunwing or WestJet as the case implies.

**Airline Party.** Either Sunwing or WestJet as the case implies.

**Integrated Pilot Seniority List; IPSL.** The single completed pilot seniority list prepared by the Association and Unifor, or as arbitrated, and accepted by the Company.

**Unifor.** The Unifor Local 7378 Master Executive Council for the Sunwing Pilots.

**Sunwing Pilot.** A pilot on the Sunwing Pilots' Seniority List.

**Union(s).** ALPA and Unifor as the case implies.

**WestJet MEC.** The ALPA Master Executive Council for the WestJet Pilots.

**WestJet Pilot.** A Pilot on the WestJet Pilots' Seniority List.

**WestJet Report Date.** The effective Reporting Date, as defined in WestJet CA2, that a Sunwing Pilot transfers to a WestJet Pilot Position, which shall be no earlier than the date that an IPSL is agreed to by ALPA and Unifor or ordered by Arbitrator Gedalof.

## Section 3 – Integration of the Sunwing Pilots into WestJet CA2

### **3-1. Integration Vacation**

- 3-1.1. Sunwing Pilots may be required to take their accrued Sunwing vacation between April and November of 2025 (regardless of whether they have transferred) or they may have their remaining accrued Sunwing vacation paid out. Such accrued Sunwing vacation shall be paid at the rate that is applicable at the time that the Pilot’s vacation is paid.
- 3-1.2. Sunwing Pilots will be provided a prorated allotment of WestJet vacation for the period from their WestJet Report Date to the end of 2025, in accordance with WestJet CA2. Sunwing Pilots will participate in a March vacation bid for 2025 vacation (the “2025 Integration Vacation Bid”), which vacation time may occur at either WestJet or Sunwing. Eligible vacation periods may be limited by training dates and operational requirements and Pilots may be required to use vacation following transfer and while in line for training.
- 3-1.3. In no circumstance in calendar year 2025 will a Sunwing Pilot, as a result of a transfer under this Agreement, be assigned or awarded less vacation time than their annual vacation allotment under Section 26-2.04 of WestJet CA2 for the 2025 calendar year (including both vacation time taken at either Sunwing or WestJet).

### **3-2. Sick Bank**

- 3-2.1. A Sunwing Pilot shall, on their assigned WestJet Report Date be allocated the greater of the following sick bank Days:
  - a) The number of prorated sick leave Days for the remainder of the year calculated in accordance with WestJet CA2 SECTION 27-2.03, or
  - b) The number of remaining sick leave Days the Sunwing Pilot has left in their Sunwing sick leave bank immediately prior to their assigned WestJet Report Date.

### **3-3. Pilot Files**

- 3-3.1. A Sunwing Pilot’s disciplinary files for the last twenty-four (24) months shall be transferred to WestJet on the Pilot’s assigned WestJet Report Date for purposes of progressive discipline as if the discipline was issued at WestJet. Any inactive disciplinary files beyond twenty-four (24) months shall not be used for the purposes of progressive discipline at WestJet.

3-3.2. A Sunwing Pilot's training files shall be transferred to WestJet.

### **3-4. Probation**

3-4.1. Sunwing Pilot that is on probation at Sunwing as of their assigned WestJet Report Date shall finish the remainder of their probationary period at WestJet in accordance with Section 6 of WestJet CA2. The terms and conditions of Section 6 shall apply as if the probation period had commenced under WestJet CA2.

### **3-5. Benefits**

3-5.1. Sunwing Pilots shall be eligible for all benefits immediately upon their assigned WestJet Report Date, subject to applicable elimination periods in accordance with SECTION 23 BENEFITS of the WestJet CA2.

3-5.2. A Sunwing Pilot transferring employment to WestJet shall not be subject, as a result of their transfer, to the pre-existing conditions restrictions in the applicable benefit plan(s) that are subject to a pre-existing clause as long as they have met the pre-existing condition period requirements in the Sunwing plan(s) prior to their transfer date, or, in the case of critical illness insurance, the earlier of 24 months from the time of purchase at Sunwing or 24 months following transfer date to WestJet.

### **3-6. Pilots on Disability, Leave of Absence or extended period of Inactivity**

3-6.1. Sunwing Pilots who are on leave and inactive, or who are on an active workers' compensation claim, shall be ineligible to transfer to WestJet until they are approved to return to work.

3-6.2. Sunwing Pilots currently on disability at Sunwing shall continue on their current insurance coverage subject to the terms and conditions with the applicable insurance plans and decisions by the insurer or until such time as they are able to return to Duty.

3-6.3. A Sunwing Pilot on disability or Leave of Absence who returns to work after the completion of the transition process shall be placed in a Position at WestJet, subject to the Sunwing Pilot's seniority rights and the terms and conditions of WestJet CA2.

### **3-7. Pay and Compensation**

3-7.1. A Sunwing Pilot shall be compensated under the terms of WestJet CA2 starting on their assigned WestJet Report Date.

3-7.2. Sunwing Pilots shall be eligible for the semi-monthly lump sum payment detailed in SECTION 21-18 SEMI MONTHLY LUMP SUM PAYMENT upon their assigned WestJet Report Date under the terms of the WestJet CA2. For clarity, Sunwing Pilots will not be required to first complete the twelve (12) Active months of service requirement to be eligible to receive these semi-monthly lump sum payments.

### **3-8. Variable Compensation**

3-8.1. Upon their assigned WestJet Report Date, Sunwing Pilots shall be eligible to participate in the Owners' Performance Award ("OPA"), in accordance with Section 22-4 of the WestJet CA2 and profit share in accordance with Section 22-3 of the WestJet CA2, after the qualification period in accordance with the applicable Company plans.

3-8.2. Sunwing Pilots who have completed at least ninety (90) days of continuous service from their most recent date of hire with Sunwing will not be required to serve the ninety (90) day waiting period to be eligible to participate in the Pension in accordance with Section 22-5 of WestJet CA2 upon their assigned WestJet Report Date. Sunwing Pilots must still meet all other eligibility requirements of the Pension in accordance with Section 22-5 of WestJet CA2 in order to participate.

### **3-9. Uniforms**

3-9.1. The Company shall supply the Sunwing Pilots the uniform allotment as per SECTION 15-2 INITIAL UNIFORM ALLOTMENT.

### **3-10 Travel Privileges**

3-10.1 Sunwing pilots shall be eligible for travel privileges pursuant to the Company's *Travel Privileges Policy* immediately upon the Pilots assigned WestJet Report Date. For clarity, there shall be no waiting period for eligibility.

## **Section 4 – Work Rules Until the WestJet Report Date**

### **4-1. Collective Agreements Application**

4-1.1. WestJet and WestJet Pilots shall continue to operate under the WestJet CA2 and by other agreements that may be entered into by the Association and WestJet with respect to the WestJet Pilots.

- 4-1.2. Effective as of their assigned WestJet Report Date, a Sunwing Pilot shall be governed by the terms and conditions of WestJet CA2 and by other agreements that may be entered into by the Parties with respect to integration of Sunwing Pilots into WestJet and by other agreements that may be entered into by the Association and WestJet with respect to the WestJet Pilots.
- 4-1.3. Until November 30, 2024, the WestJet MEC and the Unifor may each continue to address, with the applicable Company, issues specific to their pilot groups, through letters of agreement, memoranda of understanding, grievances, mediations, arbitrations, and settlements that do not conflict with this transition process.

### **Section 5 - Flight Operations Integration**

- 5-1.1 WestJet at its sole discretion shall determine the Standard Operating Procedures (SOP) for the merged Pilot group, and shall review and discuss the SOP with a working group comprised of the below list of individuals.
- a) Chief Pilot, Training or their designate (WestJet & Sunwing);
  - b) Chief Pilot, B737, or their designate (WestJet & Sunwing);
  - c) Sunwing Pilot's Training Review Committee, or their designate; and
  - d) Association CASC Pilot Training Committee Chair, or their designate.
- 5-1.2. Sunwing Pilots shall operate Sunwing planes under the Sunwing AOC and WestJet Pilots shall operate WestJet planes under the WestJet AOC. There shall be no intermixing of Sunwing Pilots and WestJet Pilots for operational or training purposes. A Sunwing pilot becomes a WestJet pilot upon their WestJet Report date.
- 5-1.3 Transition training for those Sunwing pilots holding an Airline Transport Pilot License will be in accordance with Sections 16-6.05, 16-6.06, 16-6.07, and 14.4 of the WestJet CA2. Sunwing pilots holding a commercial pilot license will have training in accordance with Sections 16-6.01, 16-6.02, and 14.4.

## **Section 6 - Dispute Resolution**

The Airline Parties and the Union(s) shall resolve disputes between them concerning the interpretation or application of this transition process, as follows:

### **6-1. Determining a Position.**

6-1.1. The Airline Parties together and the Union(s) on behalf of the Pilots shall each adopt a single position concerning a disputed issue of interpretation or application of the transition process. Airline Parties shall meet for a reasonable time in an attempt to resolve the dispute.

1. The Airline Parties shall adopt a single position as they determine.
2. If applicable, the Unions shall attempt to adopt a single position by joint decision of the MECs. If they are unable to, either or both MEC may adopt an individual position.
3. Once positions have been determined as provided, representatives of each MEC and the Airline Parties shall meet in person within (14) fourteen days in an attempt to resolve the dispute. If the dispute cannot be resolved, the dispute may be referred to a single arbitrator.

### **6-2. Mediation/Arbitration**

6-2.1. Disagreements concerning this transition process may be referred to Arbitrator Eli Gedalof.

1. A case management meeting shall be held with the Arbitrator to attempt to resolve with his assistance.
2. The Parties shall provide written submissions to the arbitrator, including detailed statements on each Party's position. The arbitrator may choose to hear submissions in a formal hearing. The Arbitrations shall be conducted in person.
3. The fees and expenses of the mediation/arbitration shall be borne equally by the Parties.

## **SCHEDULE "B"**

### **APPEARANCES**

#### **For WestJet/Sunwing**

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#### **For WestJet MEC**

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Captain Francis Hane, Chair Merger Committee  
Captain Scott Anderson, Merger Committee  
First Officer Ted Hebert, Merger Committee  
First Officer Timothy Lopaschuk, Merger Committee

#### **For Unifor**

Michael Wright, Counsel, Wright Henry LLP  
Brendan Scott, Counsel, Wright Henry LLP  
Nora Parker, Counsel, Wright Henry LLP  
Captain Marquis (Mark) Taylor - Local President  
Captain Kevin Collins - Local Vice President  
Captain Kirby Reschny - Merge Committee Chair  
Captain Boris Stec - Merge Committee Member  
Captain Ian Manning - Merge Committee Member  
First Officer Sebastian Kacpura - Merge Committee Member  
Captain Nathan Lewis - Merge Committee Member  
Rikk Salamat - Data Analyst / Merge Consultant

#### **For Encore MEC**

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Nicole Whitmarsh, Counsel, Ravenlaw LLP  
Sarah Millman, Counsel, Ravenlaw LLP  
Captain Carin Kenny, WEN MEC Chair

Captain Samuel Harper, WEN MEC Vice Chair  
Captain Mark Circelli, WEN MEC Secretary Treasurer  
Captain Nathan Ellens, WEN MEC Merger Committee