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BY WEB PORTAL

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Dear Sirs/Madam:

In the matter of the *Canada Labour Code (Part I–Industrial Relations)* and a complaint of unfair labour practice filed pursuant to section 97(1) thereof by Air Line Pilots

Association, complainant, alleging violation of sections 50 and 94(1) of the *Code* by Jazz Aviation LP, respondent; ALPA Air Canada, intervenor. (036967-C)

A panel of the Canada Industrial Relations Board (the Board) composed of Ms. Ginette Brazeau, Chairperson, sitting alone pursuant to section 14(3) of the *Canada Labour Code* (the *Code*), considered the above-noted complaint.

I. Nature of the Complaint

The Air Line Pilots Association (ALPA, the complainant or the union) filed an unfair labour practice complaint pursuant to sections 50(a) and 94(1)(a) of the *Code*, alleging that Jazz Aviation LP (Jazz, the respondent or the employer) and Air Canada have engaged in conduct and business arrangements that are substantially interfering with ALPA’s representation of its members at Jazz, as well as with its administration of the collective agreement between ALPA and Jazz. It claims that both Jazz and Air Canada, through their joint conduct, have interfered with the rights of all pilots at Jazz. ALPA further contends that Jazz has failed to comply with its statutory duty to bargain in good faith, thereby undermining ALPA’s status as the exclusive bargaining agent for the Jazz pilots.

In a decision issued on November 7, 2025 (see *Jazz Aviation LP*, 2025 CIRB LD 5873 (LD 5873)), the Board determined that Air Canada was not a proper respondent in the complaint and limited the scope of the dispute to the following issues:

1. Has Jazz breached its duty to bargain in good faith, or interfered in the union’s ability to represent its members by its inability to implement article 3.14 of the collective agreement in force between Jazz and ALPA?
2. Is this issue more appropriately dealt with through the grievance arbitration process?

Furthermore, the Board indicated that an oral hearing was not necessary, as it was satisfied that it had all the necessary information and documents on file to address these questions (see section 16.1 of the *Code*). The present decision provides the Board’s determination of the remaining questions.

II. Background and Factual Context

In LD 5873, the Board summarized the facts and events that led to the present complaint. It is helpful to highlight some of these facts for the purpose of this decision.

ALPA represents a unit of approximately 1,400 pilots working at Jazz. The terms and conditions of employment applicable to these pilots are governed by a series of successive collective agreements that expire on December 31, 2035.

Jazz operates regional flights for Air Canada pursuant to a Capacity Purchase Agreement (CPA) between the two entities. The CPA governs the relationship between Jazz and Air Canada, including the payment and cost-reimbursement arrangements. ALPA is not a party to the CPA.

In January 2015, ALPA and Jazz concluded a Memorandum of Settlement (MOS-2), in which they agreed to a nominal expiry date of December 31, 2025, for their collective agreement. In essence, they agreed to a series of successive agreements with the opportunity to bargain certain terms between each agreement, but without the ability to strike or lockout until the end of 2025. Concurrently, Jazz and Air Canada extended their CPA to the end of 2025.

As part of the negotiations for MOS-2, the parties also entered into a one-time pilot mobility agreement, which allowed for the transfer of approximately 500 pilots from Jazz to Air Canada.

Modifications to the collective agreement between ALPA and Jazz were negotiated and implemented through MOS-3 in May 2018.

In January 2019, ALPA and Jazz entered into MOS-4, by which they agreed to extend the nominal expiry of the collective agreement a further 10 years to December 31, 2035. During these negotiations, the parties agreed to the integration of pilots from Air Georgian, another regional airline that provided services to Air Canada, into Jazz's operations. As part of this agreement, a clause was added to the collective agreement that guaranteed a certain level of hiring of Jazz pilots at Air Canada. This provided Jazz pilots with a defined and predictable career progression, which, in turn, allowed Jazz to recruit new hires with the promise of career advancement to Air Canada.

This hiring guarantee is found at article 3-14 of the collective agreement:

> .01 On an annual basis, Air Canada shall offer no less than sixty percent (60%) of its new hire positions to Pilots on the Pilot System Seniority List who have applied. This process shall be jointly monitored by the parties on a quarterly basis and shall be adjusted as needed to meet the sixty percent (60%) annual offer obligation. The parties shall meet and discuss unforeseen issues that could impact operations.
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> .02 The hiring process for employment at Air Canada shall be in order of seniority from the group of Pilots that have applied.
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> .03 All Pilots meeting Air Canada's basic requirements specified in pilot position profile 18853 (as amended and superseded from time to time) shall be qualified candidates.
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> .04 Air Canada retains its right of selection in making offers during the hiring process. Without prejudice to the sixty percent (60%) annual offer obligation, the parties recognize that not all candidates will be successful but at no time will Air Canada exceed an annual turndown rate of greater than ten percent (10%) of qualified candidates (as defined in paragraph .03 above) in exercising its right of refusal. The parties and Air Canada shall meet to discuss any ongoing issues with the turndown rate.
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> .05 Air Canada shall reduce the surplus Pilots created during the Company's hiring of Air Georgian (AG) pilots and adjustment of the fleet of Covered Aircraft within twenty four (24) months of the implementation of MOS No 4. If Air Canada does not meet the foregoing surplus reduction, then all Pilots in an affected roster shall be guaranteed eighty (80) credits per month until the reduction has been completed.

This commitment was important to the Jazz pilots during the negotiations of MOS-4, as they sought enforceable and guaranteed progression to Air Canada. The clause was agreed to by the parties following assurances provided by Air Canada to Jazz in a letter dated January 21, 2019, which states the following:

> In reference to the MOS No. 4, Air Canada acknowledges and confirms the following:
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> **11. Pilot Movement to Air Canada**
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> a. As previously agreed, on an annual basis, Air Canada is prepared to offer no less than 60% of its new hire positions to qualified Jazz pilots on the Jazz-ALPA pilot system seniority list who have applied to work for Air Canada. This commitment remains subject to Air Canada's hiring policies and standards as they pertain to pilots, as applicable from time to time and shall be jointly monitored by Jazz and Air Canada on a quarterly basis and shall be adjusted as needed. Jazz and Air Canada shall meet and discuss unforeseen issues that could impact operations.
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> b. As per current practice and Air Canada's hiring policy, the employment at Air Canada shall be offered in order of seniority from the group of Pilots that have applied and are considered qualified candidates.
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> c. All Pilots meeting Air Canada's basic requirements specified in pilot position profile 18853 (as amended and superseded from time to time) shall be considered qualified candidates.
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> d. Air Canada retains its right of selection of the candidates it concludes are most appealing in making offers during a hiring process. As previously agreed, without prejudice to the 60% annual offer obligation, the parties recognize that not all candidates will be successful but at no time will Air Canada exceed an annual turndown rate of greater than 10% of qualified candidates (as defined in paragraph 11.c above) in exercising its right of selection. Air Canada and Jazz shall meet to discuss any ongoing issues with the turndown rate.

In 2021, there was no pilot hiring at Air Canada due to the COVID-19 pandemic. The ensuing consequences of the pandemic resulted in a pilot shortage as airlines progressively returned to full capacity. Jazz admits that it is facing a shortage of qualified aircraft captains, making it difficult to meet the established flight schedule.

Air Canada advised Jazz in September 2022 that it was ceasing the hiring of Jazz pilots. Both the union and Jazz indicate that they face challenges in recruiting new pilots and retaining qualified aircraft captains, which, in turn, puts a strain on Jazz's ability to meet its operational commitments to Air Canada. As a result, Air Canada has limited its hiring of Jazz pilots to ensure that Jazz maintains staffing levels necessary to fulfill the flight commitments established under the CPA.

Jazz and ALPA have attempted to address the pilot shortage issues through negotiations of increased wages and other measures to attract and retain pilots. In August 2023, an agreement was reached between the parties that provided wage increases of between 15 and 50 percent, as well as other compensation improvements for Jazz pilots.

Also in August 2023, ALPA filed the present unfair labour practice complaint.

III. Positions of the Parties

A. The Union

The union argues that the employer has breached the collective agreement and, as a result, the affected pilots have lost the advantages of accruing seniority with Air Canada. This, in turn, has resulted in lost opportunities in the form of wages and other benefits associated with that seniority.

ALPA submits that, in exchange for hiring guarantees at Air Canada, it agreed to long-term agreements with Jazz, forsaking the right to strike. It also agreed to integrate pilots from two regional airlines into the Jazz bargaining unit on a date-of-hire basis with pay protection. Those were significant issues that ensured long-term labour relations stability for the airlines in the context of the CPA between Jazz and Air Canada. By agreeing to these significant items, the union provided the necessary context for Air Canada and Jazz to enter into a long-term CPA and, in turn, predictable career progression to Air Canada for Jazz pilots.

ALPA contends that Jazz has failed to enforce the provisions of the collective agreement relating to the 60 percent hiring provision, thereby interfering with ALPA's ability to negotiate terms of employment and eroding confidence among its membership. ALPA objects to the employer's request that the matter be deferred to grievance arbitration. It takes the position that there are broader issues of interference by Air Canada and Jazz through the CPA that preclude ALPA from addressing critical issues affecting Jazz pilots' terms and conditions of employment. In its view, the grievance arbitration process is not appropriate to address the substance of those issues.

ALPA asks the Board to issue a declaration of violation of the *Code*, as well as an order directing both Jazz and Air Canada to take all necessary steps to honour the commitments made in the CPA.

B. The Employer

Jazz takes the position that its actions were all made in good faith, for legitimate business reasons, and entirely untainted by anti-union animus. It submits that it and ALPA have freely negotiated and entered into collective agreements providing long-term labour stability, which was critical to demonstrating its reliability as a provider of regional flights to its commercial partner, Air Canada. In its view, this has benefited both Jazz's and ALPA's interests.

Jazz indicates that its collective agreement with ALPA does not contain any language providing a guarantee of exclusivity with Air Canada. In any event, it submits that the Board is not the proper forum to address issues arising under the CPA, a commercial agreement between it and Air Canada to which ALPA is not a party. Furthermore, Jazz states that there has been no reduction in work for its pilots as it has shifted its focus to major hubs, given the current shortage of aircraft captains.

Jazz argues that the essential nature of ALPA's complaint relates to the flow of pilots to Air Canada under article 3-14 of the collective agreement. It indicates that this issue is the subject of a grievance and contends that the matter is more appropriately addressed through the grievance arbitration process. Jazz invites the Board to dismiss the complaint or, in the alternative, asks the Board to defer the complaint until the grievance arbitration process is completed.

IV. Analysis and Decision

In its complaint, the union alleges that Jazz and Air Canada, acting together, have breached the *Code* by leading the union to accept certain terms in the collective agreement at significant cost, including forsaking its right to strike for a period of several years. The union also alleges a breach of the *Code* because the employer is now unable to implement a provision of the collective agreement that was central to the union accepting an extended 10-year term.

As indicated in LD 5873, the Board determined that Air Canada was not a proper respondent in this matter. It concluded that the core of the union's allegations against Air Canada related to a common employer application, rather than a complaint that the employer has interfered with the representation rights of the union. Accordingly, what is left is the union's argument relating to the employer's failure to implement article 3-14 of the collective agreement, and the impact that this failure has had on the pilots' wages and benefits into the future.

There is no doubt that this is a serious question that impacts the terms and conditions of employment of the Jazz pilots. However, the issue arises directly from the terms and commitments contained in the collective agreement. A grievance has been filed regarding this alleged violation of the collective agreement.

The *Code* provides the Board with discretion to defer unfair labour practice complaints to arbitration. Section 98(3) of Part I (Industrial Relations) of the *Code* reads as follows:

> **98 (3)** The Board may refuse to determine any complaint made pursuant to section 97 in respect of a matter that, in the opinion of the Board, could be referred by the complainant pursuant to a collective agreement to an arbitrator or arbitration board.

The Board has generally held that arbitrators have primary jurisdiction over disputes whose true nature stems from the collective agreement, no matter how the issue is presented (see *Canadian National Railway Company*, 2005 CIRB 315 (*CN 315*)). To determine this "essential character" of a dispute, the Board looks at several considerations. As set out in *Canadian Museum of Civilization Corporation* (1996), 102 di 130; 32 CLRBR (2d) 146; and 96 CLLC 220-067 (CLRB no. 1181), and reaffirmed in *Expertech Network Installation Inc.*, 2005 CIRB 337 (*Expertech*), the Board examines who the parties are, where the events occurred, when the claim arose and whether an arbitrator could grant the remedies being sought. The Board explained in *Expertech* that this assessment helps determine whether the matter should be addressed at arbitration:

> [33] The Board, in *Canadian Museum of Civilization Corporation*, *supra*, stated that one must look to the essential character of the dispute when determining whether the matter can be referred to arbitration:

> ... when examining whether **statutory rights** have to be reaffirmed under the *Code*, the Board is then scrutinizing the possible legal aspects of the dispute and the **rights** flowing from the **statute**, rather than asking itself whether the dispute could be resolved at arbitration, and whether the arbitrator has the power to grant the remedies requested.
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> Conversely, if considering only whether the matter goes beyond the scope of the collective agreement, the Board will then concentrate on the facts of the dispute, regardless of its legal characterization, as directed by the Supreme Court in the context of court actions. The Board will then determine the "essential character" of the dispute and will be guided, inter alia, by the identity of the parties, the place of conduct, the time of the claim and whether the remedies sought may be granted by an arbitrator. **In general sense, the essential character of the dispute will be found to arise under the collective agreement if it concerns its application, interpretation, administration or alleged violation**.
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> (pages 140; 157-158; and 143,652; emphasis added)

In sum, these cases demonstrate that the Board tends to avoid intervening where the central issue is rooted in the interpretation or application of the collective agreement.

There are, however, exceptions. The Board may decide to exercise its overlapping jurisdiction even when an arbitrator could ordinarily hear the matter. This generally occurs where the complaint raises issues of public policy or involves the need to affirm statutory rights (see *Loomis Armored Car Service Ltd. et al.* (1983), 51 di 185 (CLRB no. 408); and *Canada Post Corporation* (1987), 69 di 91 (CLRB no. 620)).

In the present case, the Board is of the view that the dispute fundamentally arises from the alleged violation of the collective agreement with respect to the flow of pilots to Air Canada. The union's central argument is that the employer and Air Canada have failed to maintain the 60 percent threshold of new hires at Air Canada, and that this was a central component achieved through collective bargaining over several years. That commitment is embedded in article 3-14 of the collective agreement. In response, Jazz indicates that there are legitimate business reasons that justify its actions and that, in any event, the provision in the collective agreement provides for a process of discussion to address difficulties with the implementation of the flow-through of Jazz pilots to Air Canada.

ALPA argues that its complaint extends beyond the provision in the collective agreement, as there are broader issues that need to be addressed between Jazz and Air Canada. It takes the position that issues such as the recruitment of pilots and their retention through better terms and conditions of employment cannot be addressed through the arbitration process, as it cannot be responsive to these challenges.

The Board was not persuaded that this case raises broader public policy issues under the *Code* requiring its intervention. Although the union raised concerns about recruitment and retention of pilots, those matters are better addressed by the parties themselves through bargaining or discussions, as envisaged in article 3-14 of the collective agreement.

The circumstances of the present complaint are similar to those present in *Expertech*. In that case, the union had filed a complaint under sections 50(a) and 94(1)(a) of the *Code*, alleging that the employer had failed to honour commitments regarding an early retirement plan made during bargaining. The union contended that this failure interfered with its representation rights and undermined the members' perception of its ability to properly represent them. The Board determined that the essential character of the dispute concerned the interpretation and application of the collective agreement. It found it appropriate to refuse to determine the unfair labour practice complaint pursuant to section 98(3) of the *Code*, favouring the grievance arbitration process.

In *CN 315*, the Board reviewed its approach to referring complaints to grievance arbitration. In that case, the union had filed two complaints of unfair labour practice, alleging a violation of sections 50(b) and 94(1) of the *Code* by the employer. The employer argued that the matter should be referred to arbitration pursuant to section 98(3) of the *Code*. The Board, however, concluded that the employer had repeatedly been found to have breached the same sections of the collective agreement. It is in this context that the Board concluded that the grievance procedure had become ineffective and proceeded to determine the complaint, despite the fact that the issues arose under the collective agreement.

In the present matter, there is no suggestion that there is disregard for the grievance process or its outcomes. Viewed in light of its true nature, the dispute clearly arises from how the collective agreement is to be interpreted and applied. The remedies sought—namely, declarations of breach, and orders requiring the employer to comply with the collective agreement or to enter into discussions to address the unforeseen issues that impact operations, as provided in article 3-14 of the collective agreement—are all matters within the jurisdiction of an arbitrator. Consistent with the objectives of the *Code* and the importance of an effective arbitration system, the dispute should proceed through arbitration.

For these reasons, the Board refuses, pursuant to its authority in section 98(3) of the *Code*, to determine the unfair labour practice complaint filed by ALPA on August 28, 2023. The complaint is therefore dismissed.

For the Board,

Ginette Brazeau
Chairperson

c.c.: Mr. Jesse Peters