

2018 CarswellNat 2133  
Canada Adjudication (Canada Labour Code Part III)

Richard and North Cariboo Air Ltd., Re

2018 CarswellNat 2133

**IN THE MATTER OF AN ADJUDICATION UNDER  
DIVISION XIV - PART III OF THE CANADA LABOUR CODE**

MR. MARCOS RAFAEL RICHARD (the "Complainant" or "Mr.  
Richard") and NORTH CARIBOO AIR LTD. (the "Employer")

John Poetker Adjud.

Heard: March 22, 2018

Judgment: May 11, 2018

Docket: YM2707-10236

Counsel: Mr. Greg Stirling, Q.C., for Employer

Subject: Labour; Public

**Headnote**

Labour and employment law

***John Poetker Adjud.:***

**BACKGROUND**

1 This is an adjudication pursuant to Division XIV, Part III of the Canada Labour Code (the "*Code*"), Revised Statutes of Canada, 1985 c. L-2, as amended, relating to the unjust dismissal complaint (the "*Complaint*") filed by the Complainant with the Government of Canada Employment and Social Development Canada Labour Program ("*ESDC*") on November 30, 2014.

2 The Complaint was originally scheduled to be heard on May 16, 2016 but was adjourned at the request of the Complainant On March 21, 2018. The Complainant, via email, requested an adjournment of the hearing scheduled for the next day. Given the length of time that the matter had been outstanding, the fact that the Complainant already was granted an adjournment and his failure to respond to emails or voicemails, the request was denied.

3 The Employer operates a small airline. The Complainant is a pilot and was employed as a captain of the Dash 8 aircraft. By letter dated November 6, 2014, the Complainant's employment was terminated because he failed on several occasions to pass the pilot proficiency check on the Dash 8 aircraft.

4 The Complainant filed a Complaint with ESDC alleging unjust dismissal on the basis that the second pilot proficiency check was not recognized by Transport Canada as being valid and the Employer did not afford him the opportunity for another pilot proficiency check.

**SUMMARY OF EVIDENCE**

5 Mr. Green testified on behalf of the Employer. He is the Vice President of Operations, a position he held since 2014. As the Operations Manager, Mr. Green had responsibility for safe flight operations. This is a mandate imposed on a flight operations manager by Transport Canada Regulation 725.

6 Mr. Richard was initially hired by the Employer as a captain of the Beech 1900-D aircraft and moved up to the position of Captain on the Dash 8 aircraft in June 2012. Mr. Green testified that Mr. Richard would have had at least 5 pilot proficiency checks and 18 two day training sessions on the Dash 8 prior to the events in issue here.

7 Mr. Green was involved in the decision to terminate the Complainant's employment. Mr. Richard failed to meet the minimum standards for a Dash 8 Captain and this was the reason for the termination. A basic requirement for any Dash 8 pilot is the requirement to pass a pilot proficiency check ("*PPC*") every 6 months.

8 Mr. Green reviewed what is involved in a *PPC*. He testified that the *PPC* is conducted by a pilot (the "*Check Pilot*") approved for that purpose by Transport Canada and that the Employer provides the pilots with several days of recurrent training on a flight simulator prior to the actual *PPC*. He testified that there are about 25 manoeuvres that must be successfully completed during the *PPC* and that a score of "1" on any maneuver or a score of 5-2's will be considered a failure and the pilot is then scheduled for remedial training.

9 The simulator training is conducted under the direction of a training pilot (the "*Instructor*") who may be an employee of the Employer. A different Instructor is chosen for each training session to avoid any potential for bias from a prior training session.

10 The first training session relevant to Mr. Richard's termination took place on October 4, 2014. Based on his performance at the training session, he was not recommended for the *PPC* by the Instructor.

11 Representatives of the Employer met with Mr Richard following the training session and provided him with a letter dated October 10, 2014 as a follow up to what was discussed at the meeting. The Complainant was advised that because he failed to qualify for the *PPC*, he was being removed from the conduct of normal line operations, that he would be provided further remedial training, and if successful, the opportunity to take the *PPC*. He is advised that if he was unsuccessful in the remedial training he would be entitled to further remedial training to try to qualify as a First Officer on the Dash 8 with the appropriate adjustment to work and pay schedules. If he elects to not accept the remedial training to qualify as a First Officer, he would be given another chance to try to qualify as a Captain on the Dash 8. He is advised that, if he fails, he would be terminated.

12 Mr. Richard elected to attempt to qualify as a Captain on the Dash 8 and the remedial training session on the flight simulator took place on October 14, 2014. Mr. Richard is recommended for the *PPC* by the Instructor. Mr. Richard failed the *PPC*. One of the comments noted on the flight test report by the Check Pilot is a failure on the part of Mr. Richard to maintain situational awareness during the hold pattern and allowing the aircraft to exceed the recommended airspeed for the particular maneuver.

13 Representatives of the Employer again meet with Mr. Richard and provide him with a letter dated October 27, 2014 as a follow up to what was discussed at the meeting. He is advised that he will be provided another training session to attempt to qualify as Captain on the Dash 8, and if successful, the opportunity to take the *PPC*. He is reminded that if he is unsuccessful on either one, he will be terminated.

14 Mr. Richard's training session is scheduled for November 3, 2014. He is approved for the *PPC* by the Instructor. The *PPC* takes place on November 5, 2014. Mr. Richard failed the *PPC* and is terminated. The Employer issues the termination letter dated November 6, 2014 to Mr. Richard and pays him the amount outstanding for final wages, vacation pay and meal per diems.

15 The Employer's evidence was supported by written records of its communication with the Complainant. ESDC, Transport Canada and the relevant Transport Canada regulations.

16 Mr. Green did not participate in the hearing. In his correspondence with ESDC, the Complainant claims that he was wrongfully terminated because Transport Canada invalidated the PPC conducted on November 5, 2014 and the Employer should have afforded him the opportunity of another PPC.

17 Mr. Green was asked to address Mr. Richard's position. He testified that, while they have a 3 strike approach to terminating pilots, the decision of Transport Canada to reject the PPC did not change his decision to terminate Mr. Richard since the administrative oversight which caused Transport Canada to reject the check ride had no impact on his performance as a pilot. Mr. Richard was not qualified to fly. He pointed out that Mr. Richard did not qualify for the PPC after his first recurrent training session (the first strike) and did not pass the PPC following the 2nd and 3rd (the second and third strikes) recurrent training sessions, and as safety is paramount, he was dismissed.

#### SUMMARY OF CLOSING ARGUMENT

18 Counsel for the Employer referred me to two cases in support of their position that the dismissal was just; *Greyeyes v. Ahlakkakoop Cree Nation*, 2003 CarswellNat 5678 and *Bell Canada v. Halle*, 1989 CarswellNat 197. Mr. Sterling, Q.C. reviewed in detailed the criteria an employer must meet in performance based discharges. He noted that Mr. Richard was clearly aware of his duties and the standard of performance expected of a Captain of a Dash 8 aircraft. When Mr. Richard failed to qualify for the PPC following his remedial training and then later failed the PPC, the Employer provided additional training and further opportunities to take the PPC. The Employer wanted Mr. Richard to succeed, the dismissal was just and the complaint should be dismissed.

#### DECISION

19 The Complainant was dismissed by the Employer based on the Complainant's inability to perform the duties of a Captain of a Dash 8 aircraft. The onus to establish that the dismissal is just rests with the Employer and it must clearly demonstrate its decision was reasonable, objective, free from any personal biases and taken for the sole purpose of ensuring the effective operation of the business. See *Canadian Imperial Bank of Commerce v. Boisvert*, [1986] 2 F.C. 431

20 In my opinion, the evidence demonstrates that the Employer was justified in dismissing Mr. Richard, Based on his results on industry standard tests, Mr. Richard was not qualified to fly. There is no suggestion that Mr. Richard was singled out for the recurrent training or the PPC. The recurrent training and the PPC were conducted according to industry standards. The Employer wanted Mr. Richard to succeed and gave him every opportunity to do so by providing the necessary training and opportunity to take the PPC. The actions of the Employer in my view were entirely reasonable. Mr. Richard's performance on his recurrent training and the PPC demonstrated his shortcomings and his inability to qualify as a Captain on the Dash 8. The dismissal was objective, free of any personal bias and solely to ensure the safe operations of the airline.

21 The Complainant's position that he should have been afforded an opportunity for a further PPC because the one PPC was not recognized by Transport Canada is not sustainable. It is not necessary that an employer follow to the letter the dismissal procedures which may be set out in its internal directives. There is no evidence that the 3 strike process was part of the employment contract for Mr. Richard. Mr. Richard was given ample opportunity to qualify as a Captain of the Dash 8 and he was unable to do so. Flight safety was the Employer's sole motivation. The employer acted objectively and solely for the good of the undertaking. The dismissal process taken by the Employer was fair and the decision of the employer should not be interfered with. See *Bell Canada v. Halle*, 1989 CarswellNat 197.

22 Having considered all the evidence, the submission of Counsel, the authorities referred to herein and for the reasons set out above, I find that the dismissal was not unjust,

23 The Complaint is therefore dismissed.

24 There will be no award of costs in these proceedings.

End of Document

Copyright © Thomson Reuters Canada Limited or its licensors (excluding individual court documents). All rights reserved.