

2020 CarswellNat 183
Canada Arbitration

Air Canada and CUPE (J.D.), Re

2020 CarswellNat 183

**IN THE MATTER OF A GRIEVANCE under the CANADA
LABOUR CODE and pursuant to a collective agreement**

AIR CANADA (the "Employer") and CANADIAN UNION OF
PUBLIC EMPLOYEES, AIR CANADA COMPONENT (the "Union")

Gail Misra Member

Heard: January 20, 2020
Judgment: January 27, 2020
Docket: None given.

Counsel: Eric Beaulieu, for Employer
Megan Reid, Kim Veller, for Union

Gail Misra Member:

1 I have been appointed pursuant to the collective agreement between the parties to hear a grievance dated July 25, 2018, filed by the Union on behalf of a member who was suspended pending discharge.

2 The Employer essentially terminated the grievor's employment for engaging in workplace harassment and discrimination on the grounds of nationality/ethnic origin towards a flight attendant. Given the nature of the matter at issue in this grievance, both the grievor and the complainant will be referred to by their respective initials. The grievor will be referred to as "JD" and the complainant as "JL".

3 The parties filed briefs outlining the nature of the case. The briefs included will say statements on behalf of their respective witnesses, documents they were relying upon, and case law. The Union did not seek to cross-examine either of the Employer's witnesses. The Employer cross-examined the grievor.

THE FACTS

4 JD started working as a flight attendant with Air Canada in April 1998. His employment was terminated on July 23, 2018. As such, he had over 20 years of service with the Employer at the time of his termination, and, as will become clear later in this decision, he had no discipline on his record.

5 On April 19, 2018 the grievor operated a flight as the Service Director from Toronto to Houston, and back to Toronto. JL was the other crew member on the flights. JL is a female flight attendant of Asian ethnic origin.

6 On May 14, 2018 JL filed a formal workplace harassment complaint against the grievor regarding his remarks and behaviour towards her on the Toronto-Houston-Toronto flights on April 19, 2018. Her complaint outlined the following concerns with the grievor's behaviour:

- At some point JL tried to call JD on the airplane interphone but was unable to reach him. When JD called her back, he told her he was "just playing hard to get".
- The grievor asked JL "Are you made in Canada or in China?" After JL told him "Canada", the grievor is alleged to have said that her parents must be from China.
- Despite JL telling him that none of her family or relatives were from China, the grievor then went on to say "You must live in Markham. You must drive a white car with a brand like Benz, BMW, and Audi — All Asians drive those types of cars". JL told him she did not fall into those typical stereotypes.
- During the provision of service on the flight, the handheld device was accidentally placed in the ice bucket. JL tried to dry off the device, but it would not turn on so she advised JD. JD commented "You're Asian, you must have a bag of rice in your lunch bag for us to put the device in".
- When JD and JL were discussing the new Air Canada uniforms, JD expressed that "the new uniform pants are made for Asian men with less of a junk"; that he would need to get the crotch let out otherwise it would "show everything of his".
- JD commented on JL's appearance asking her if her lips were real.
- When doing the water service, JD had reached for cups, and had grazed JL's breast. She was not sure if it was intentional or not, but since she had been feeling discomfort with JD before that incident, it exacerbated the situation for her.
- JD took all his breaks at the back of the aircraft with JL, and tried continuously to engage in conversations with her although she had tried to show no interest in having conversations with him. She felt trapped, and since JD seemed to be friends

with the pilots, JL did not feel she could voice her discomfort to anyone else on the flights.

- JL indicated she had never before experienced such behaviour at work; was made to feel uncomfortable, helpless and trapped. She did not feel comfortable flying with JD, and hoped not to have to do so again.

7 On May 24, 2018 Emily Kaufer, Manager Human Rights, Harassment and Privacy Compliance, called JL to interview her about the contents of the complaint. JL confirmed the content of the racial comments that the grievor had made to her, and described the event where she believed that the grievor had grazed one of her breasts. During the course of that interview JL reiterated that she did not feel comfortable flying with the grievor, and hoped not to have to do so again.

8 On June 5, 2018 Ms. Kaufer sent a letter to the grievor advising him that a formal complaint had been lodged by JL; she advised him of the main allegations being made against him; and that an investigation would follow. Although the allegations outlined in the letter are largely as identified above from JL's complaint, one allegation was worded very slightly differently: Regarding the new Air Canada uniforms, JL had apparently told Ms. Kaufer that "when she asked you about your opinions regarding the new uniform, you stated that the men's pants are meant for "Asians because they have less junk" and that you had to take out the pants in the crotch area, or else they would have shown yours".

9 On June 7, 2018 the grievor, accompanied by his union representative Dennis Montpetit, was interviewed by the investigator, Ms. Kaufer. Ms. Kaufer's undisputed evidence is that although the grievor indicated he had no malicious intentions in his discourse with JL, he denied having said what was reported, or indicated different words that he claimed to have used. He showed no remorse for his behaviour or actions in that meeting. The grievor's responses to the allegations were as follows:

- The grievor did not recall saying that he was just playing hard to get.
- He denied having asked JL if she was made in Canada or China, but believed he had asked her if she was born in China.
- Regarding the comment that she must live in Markham, drive a white car with a brand like Benz, BMW and Audi, as all Asians drive those types of cars, the grievor said he did not remember, was surprised by the allegation, and that he did not believe he would have spoken to JL in a discriminatory manner.
- The grievor denied having made the comment about JL being Asian, and that she must have a bag of rice in her lunch bag for them to put the handheld device in.

Instead, the grievor stated that he may have jokingly said "it would be nice if we had a pail of rice onboard to dry off any electronics".

- The grievor denied having said that the new Air Canada uniforms were made for Asian men "with less junk", but indicated he would have said that he had to have his pants taken in because he had lost weight.
- The grievor denied having asked JL if her lips were real, and indicated that it was not something he would ever say.
- The grievor denied that the chest grazing incident had ever happened.

10 On July 6, 2018 the grievor was advised that the investigation had been completed. The investigators had concluded that the totality of the information supported a finding of workplace discrimination by JD against JL, on the grounds of nationality/ethnic origin. They found that the grievor had engaged in unwelcome behaviour through his vexatious comments towards JL about her nationality/ethnic origin on April 19, 2018, all of which had caused her offence and annoyance, and had created an intimidating work environment for JL. They noted however that the information before them did not support a finding of sexual harassment, or discrimination based on gender (female).

11 The four specific allegations in the complaint that had been found to be supported were the following:

- a) The grievor had asked JL "Are you made in Canada or China?"
- b) The grievor had told JL "You must live in Markham" and "You must drive a white car with a brand like Benz, BMW and Audi — all Asians drive those types of cars."
- c) With regards to Air Canada's new uniform, the grievor had told JL that the men's pants "are meant for Asians because they have less junk in the trunk", and added that he personally needed to get the crotch let out otherwise it would show everything of his. (I note here that the alleged comment has been changed to "junk in the trunk", which was not in the original JL complaint).
- d) With regards to the handheld device that had been placed in the ice bucket by mistake, that the grievor had told JL "You're Asian, you must have a bag of rice in your lunch bag for us to put it in".

12 The investigators recommended, among other things, that the finding be reviewed with the grievor and that appropriate corrective measures be taken; that a copy of the Final Investigative Report be provided to the Manager of Labour Relations and the Director, In Flight Services, for their review and to determine a course of action to be

taken with the grievor; and that moving forward, best efforts be made to keep JL and JD separated from one another in the workplace. It is noteworthy that the investigators do not appear to have been involved in determining what management's course of action should be.

13 By a letter dated July 6, 2018 the investigators informed the grievor of the outcome of the investigation, which supported a finding of workplace discrimination by JD against JL on the grounds of nationality/ethnic origin. They advised him that they had concluded that he had engaged in unwelcome behaviour towards JL whereby vexatious comments were made to her concerning her nationality/ethnic origin, causing her offence and annoyance, and creating an intimidating work environment for her.

14 By a letter dated July 6, 2018, JD was also advised by Gabriella Bellisario, Cabin Crew Manager, that he would be held out of service for seven days effective that date, and that he was to meet with Michelle Leung, Cabin Crew Manager, on July 10, 2018 to discuss the final outcome of the workplace harassment complaint.

15 On July 10, 2018 the grievor and his union representatives met with Ms. Leung and another member of management, and the investigation results were shared with him. On July 11, 2018 the grievor was advised that as a result of the investigation, he was suspended pending discharge. On July 23, 2018 the grievor received a letter, signed by Ms. Leung, confirming in writing that he was suspended pending discharge. I am advised by the parties that a letter indicating a suspension pending discharge is actually a letter advising of termination from employment.

16 In the July 23rd letter of termination Ms. Leung relied on two other matters in finding that the JL harassment complaint was "indicative of ongoing and escalating inappropriate behaviour directed towards crew members, and a repetitive failure to comply with Air Canada's policies", and she noted that "your behaviour and actions will not be tolerated". The two other matters were as follows:

- That the grievor had been demoted for a six month period effective June 2, 2017 due to his failure to comply with Air Canada standards and expectations; and she noted that he had been reinstated to the Service Director position for the February 2018 block month.
- That by March 2018 an informal complaint had been filed by a flight attendant who had worked with the grievor. That complaint had claimed that the grievor acted inappropriately and unprofessionally towards her.

17 The present grievance was filed on July 25, 2018, claiming that the Employer did not have just cause to terminate the grievor's employment. The remedies sought included

reinstatement to employment with compensation for lost wages, benefits, service and seniority, and removal of the discharge from the grievor's record.

18 As noted earlier, the Employer filed two will say statements: one was on behalf of JL and the other on behalf of Emily Kaufer. No will say was filed on behalf of the decision maker in this case, Ms. Leung. As the Union did not wish to cross examine JL or Ms. Kaufer, their respective will say statements are accepted as their uncontradicted evidence.

19 The Union filed a will say on behalf of the grievor. According to JD he had met with counsel for the union in preparation for this hearing, and of his will say, and had reviewed his will say prior to it being submitted as part of the Union's brief. On the four main issues that the Employer had relied upon from the findings of the investigators, JD stated as follows in his will say:

- Regarding the "made in Canada or China?" question, the grievor continued to maintain that he may have asked JL if she was born in China, but that he did not recall having asked the question as alleged by JL.
- Regarding the comments that JL must live in Markham, drive a white car with a brand like Benz, BMW and Audi, and that all Asians drive those types of cars, the grievor stated that while he had not initially remembered saying that to JL, he had come to realize that he may have said something along those lines. JD indicated that he never intended to speak to JL in an offensive manner or to make discriminatory comments towards her, but that he now understands that such comments are inappropriate. He apologizes for the comments.
- With respect to the comments about the new Air Canada uniforms, and in particular the pants, the grievor believes there was a misunderstanding. He believes that he may have been looking down at his pants, and said something to JL regarding having his uniform altered because he had recently lost weight. JD goes on to state that while he did not initially recall making a comment about Asian individuals having less "junk", upon reflecting and preparing for mediation he recalled that he may have said something like what is alleged, but states that he said "junk in the trunk". He used the term "junk" in the context of weight and weight loss, not as a reference to male genitalia.
- Regarding the comment about having a bag of rice in JL's lunch bag to dry out the handheld device, the grievor states that he did not believe he had made the alleged comment. He continues to maintain that he said it would be nice if they had a pail of rice on board so they could use it to dry off any electronic devices.

20 I note that throughout his will say the grievor states repeatedly that he had no intention to offend JL by his comments, that he realizes now that the kinds of comments alleged would be inappropriate and unacceptable, that they would be unwelcome, and that he is truly sorry.

21 Although not a part of the reasons that the Employer terminated the grievor's employment, the grievor states in his will say as follows regarding the three JL allegations of a sexual nature:

- The grievor has come to realize that he may have said something to the effect that he was playing hard to get, but states that it was his attempt at light humor and was not intended to be offensive. In any event, he is now sorry for having made that joke.
- Regarding the question about whether JL's lips were real, the grievor maintains that he does not recall ever asking her that question.
- Regarding the allegation that he grazed her breast, the grievor does not recall having done so, and if it occurred, he maintains it was purely accidental. He is sorry as he would not intentionally touch anybody inappropriately.

22 The Employer cross-examined JD on a number of aspects of his will say, and how it compared to what JD had told the investigators. Of interest for the purposes of this decision is the following evidence that emerged through the cross-examination:

- The grievor admitted at the hearing that he had told JL "You must live in Markham" and "You must drive a white car with a brand like Benz, BMW and Audi — all Asians drive those types of cars." The grievor had not fully admitted to this before.
- Regarding the comments about the new Air Canada uniforms, the grievor admits that he used the phrase "junk in the trunk" in his conversation with JL. He maintains that the interviewer did not put that phrase to him during the investigation, so he did not agree with what she had told him JL had alleged. It was not until he saw Ms. Kaufer's will say statement, where she referred to the comment as having been "the men's pants are meant for Asians because they have less junk in the trunk", that he can now agree that was what he said. JD maintains that since that statement was not put to him in the investigation, he had truthfully answered that he had not said what was put to him at the time, which was about Asians having "less junk", and about the crotch area of his pants.

23 Following his discharge from employment, JD of his own initiative and at his own expense, took a sensitivity training course in September 2018. As already noted, in his will say JD repeatedly apologized for his comments to JL on the flights in question, indicated he now realizes how his comments would have been received, and offered to apologize to JL, if she would permit him to do so. He understood why she would not want to fly with him again.

24 It is undisputed that on February 26, 2019 JD's grievance regarding the six month demotion was resolved such that the demotion was rescinded, and JD was compensated for all his losses.

25 It is also undisputed that the March 2018 informal complaint to which Ms. Leung referred in the termination letter had been investigated, and the Employer had advised the grievor that no fault had been attributed to him. He was never disciplined regarding that complaint.

AIR CANADA POLICY AND GUIDELINES

26 In 2015 Air Canada produced a Workplace Violence and Harassment Prevention Policy (the "Policy") in order to further its commitment to provide all employees with a safe and healthy workplace, free from violence and harassment.

27 The Policy defines "Harassment" as including "comments, teasing, jokes or other communications that insult, demean, embarrass or offend a targeted person or group".

28 Air Canada also adopted "The Guidelines for Compliance for Workplace Violence and Harassment Prevention Policy" (the "Guidelines") at around that time to ensure that all employees would know how to comply with the Policy. The Guidelines state that "harassment" is "a course of vexatious comment or conduct towards an employee in their workplace that is known or ought reasonably to be known to be unwelcome, excluding comments or conduct related to the proper exercise of legitimate management authority". "Vexatious" means "annoying, troublesome or upsetting". Furthermore, according to the Guidelines, discriminatory harassment is prohibited, will not be tolerated, and an employee found to have committed harassment in the workplace will be subject to discipline, up to and including termination of employment. The Policy itself has a similar provision at Article 4.2.

29 The Air Canada Code of Conduct also notes the Employer's commitment to provide a safe and healthy workplace, free from violence and harassment.

30 On October 29, 2016 the grievor completed the Workplace Violence and Harassment course offered by Air Canada. In cross-examination JD agreed that the Policy and the Guidelines were presented and reviewed in the course. JD was aware of the consequences outlined for employees who breach the Policy or Guidelines. In at least 2016, he understood that Air Canada has a zero tolerance for harassment and violence in the workplace.

31 There is no dispute that the Policy and Guidelines are easily available to all employees, including the grievor while he was employed at Air Canada, through the Employer's on line platforms of ePub and ACAeronet.

DECISION

32 This being a discharge case, the Employer must establish that it had just cause to terminate JD's employment. Even if I find that just cause for discipline is established, I must consider whether termination was the appropriate response, or whether there was a lesser penalty that should have been imposed. In making that assessment I must also consider any mitigating factors that favour the grievor, and that may lead to the exercise of an arbitrator's discretion to substitute a lesser penalty than discharge.

33 I begin with whether the Employer has met the just cause standard. The grievor was the service director, who as such, had authority over JL, the flight attendant on the flights in question. Having considered the evidence before me, I am satisfied that JD asked discriminatory questions based on JL's ethnicity/nationality, and made ethnicity-based discriminatory and vexatious comments to JL in the course of the flights between Toronto and Houston in April 2018. Those comments were made based on his view of her ethnicity as an Asian person. They were comments based on stereotypes, and were demeaning. Some of the comments had a sexual overtone, which was inappropriate in the workplace, especially when the grievor had never met JL before, he was working in a position of authority in relation to JL, and when he did not know whether she wished to participate in that type of discourse with him.

34 While the grievor has only admitted to two of the four matters that the Employer relied upon in the termination of JD's employment, I prefer JL's version of events over that of the grievor, and find that he made all four of the comments as she recalled them.

35 JL complained that JD had asked her "Are you made in Canada or China?" JD maintains that he does not recall asking JL that question, but admits that he may have asked her if she was born in China. In light of all of the other comments that the grievor admits to having made to JL, I find on the balance of probabilities that he asked her the question as she recalls it. JL's evidence, through her will say, has been entered without

cross-examination. The question is an unusual one, and appears to have stuck in JL's memory. This particular question is what JL began her complaint with, as she had been taken aback by the question. It was also the prelude to other inappropriate comments that the grievor has admitted to making: that JL must live in Markham, that she must drive a white car with a brand like Benz, BMW and Audi, and that all Asians drive those types of cars. I therefore prefer JL's recollection regarding this comment over the grievor's, especially as the grievor does not deny that he had asked some question about whether JL was born in China.

36 The second comment that the grievor denies having made to JL was "You're Asian, you must have a bag of rice in your lunch bag for us to put it [the wet handheld device] in". The grievor maintains that he said "it would be nice if we had a pail of rice on board so we could use it to dry off electronic devices". On the balance of probabilities, for the reasons that follow, I find that JD made the comment about JL being Asian and that she must have a bag of rice in her lunch bag.

37 As I have already found, by that point in the interactions between JD and JL he had made numerous references to her Asian origin: he had asked about whether she was "made in Canada or China"; he had racially or ethnically stereotyped her as an Asian person who must live in Markham, and must drive a white car of a certain brand, as the grievor was of the view that "all Asians drive those types of cars".

38 While it is not clear when in the chronology of the various comments the grievor made to JL the discussion about the new Air Canada uniforms had occurred, that comment is a further example of the grievor making reference to Asian stereotypes. According to JL, the grievor had expressed a stereotypic view about the size of Asian male genitalia (i.e. that Asians have "less junk"), or, as he now claims at the hearing, he was commenting on the weight of Asian men ("less junk in the trunk"). The slang word "junk" connotes male genitalia. The slang reference to "junk in the trunk" refers to weight in the buttocks area. JL's complaint and her will say statement noted that the grievor had been talking about the new Air Canada uniform pants being made for Asian men with less "junk", and that JD had said that he would need the crotch let out otherwise it would "show everything of his". That was also essentially the allegation put to JD in the course of the investigation. In the context of what the grievor was alleged to have said to JL, it is apparent that she believed he was saying that the pants were made for Asian men who had smaller genitalia, while JD would have to have the crotch of the pants let out to avoid having his genitalia showing more prominently.

39 In his will say, JD states that he was looking down at his pants, said "junk in the trunk" and that "junk" in that context was referring to weight and weight loss. However, that does not explain why JD would have told JL that he had to have the crotch of his

pants let out in order for him to avoid showing everything. I prefer JL's version of what JD said as there is more consistency in the entirety of the comment as she has related it. However, even if I am incorrect in my view that the grievor was referring to Asian male genitalia, and if I accept that he was referring to Asian male weight in the buttocks area, the grievor was still making inappropriate comments that were based on his view of Asian stereotypes.

40 Finally, I note that JD recalls having made a comment about having a pail of rice on board, so there is no question that rice was mentioned at that juncture. In all of the circumstances of what JD had been saying to JL during the flights in question, I am satisfied that more likely than not he said that JL, as an Asian person, must have a bag of rice in her lunch bag, and I therefore prefer JL's recollection of the comment over that of the grievor.

41 Having regard to the fact that JD had taken the Workplace Violence and Harassment course at the end of October 2016; that he was well aware of the Employer's Policy and Guidelines in that regard; and that these events arose in April 2018, eighteen months later, I find that the grievor ought reasonably to have understood that he was engaging in "comments, teasing ... or other communications that insult, demean, embarrass or offend a targeted person or group", in this case an Asian woman. I have no trouble finding that the grievor's comments were vexatious and demeaning in nature. As such, he acted in breach of the Air Canada Workplace Violence and Harassment Prevention Policy and Guidelines.

42 Having found that the Employer has, on the balance of probabilities, established all of the elements upon which it had relied as a result of the investigation into JL's complaint, I am of the view that Air Canada had just cause to discipline JD.

43 I turn now to the Employer's decision to terminate the grievor's employment. In the suspension pending discharge letter Ms. Leung relied not just on the findings of the harassment and discrimination investigation: she also referred to two other matters, outlined earlier, that appear to have led to her finding that termination was the appropriate penalty in JD's case.

44 I find that Ms. Leung did not have any basis for relying on the March 2018 informal complaint to which she referred in the letter of suspension pending discharge. That complaint had found no fault with the grievor, and he had not been disciplined in any way in respect of that complaint. As such, it was an improper consideration in reaching the decision to terminate the grievor's employment.

45 The other matter that Ms. Leung considered was the grievor's six month demotion, from June 2017. While that had been grieved at the time of JD's termination from

employment, it had not yet been addressed by July 2018. As is now clear, and has been since February 26, 2019, the demotion has been rescinded and the grievor has been fully compensated for all his losses incurred as a result of the demotion. As such, at this juncture, and since late February 2019, the grievor would have been considered as an employee with a clear disciplinary record.

46 While I accept that at the time that the suspension pending discharge decision was made, the grievor had the six month very recent demotion on his record, and that had been a consideration in deciding to terminate his employment, that is no longer the state of affairs in this case. As of February 26, 2019 the Employer knew that the grievor's previous discipline of a six month demotion had been rescinded and the grievor was to be fully compensated. Therefore, as of that date, it knew or ought to have realized that one of the main pillars upon which Ms. Leung had relied in terminating the grievor's employment had been removed.

47 Furthermore, it should also have been aware that there was simply no foundation for Ms. Leung's reliance on the March 2018 purported incident of the grievor having "acted inappropriately and unprofessionally" towards another flight attendant.

48 For all of these reasons, I am of the view that suspension pending discharge is not the appropriate penalty in all the circumstances of this case, and I will now consider the mitigating factors that may be considered in determining what would be the appropriate disciplinary penalty. (See *U.S.W.A, Local 3257 v. Steel Equipment Co.*, 1964 CarswellOnt 498 (Reville))

49 JD had worked for Air Canada for 20 years, and as such was a long service employee. As already outlined above, the grievor is an employee who had a clear disciplinary record. When coupled with JD's 20 year tenure with Air Canada, these are two strong mitigating factors in JD's favour.

50 This is not a case in which there was any provocation that may have caused the grievor to have made the comments that he did to JL. Indeed, he had never worked with JL before, and there is no suggestion that she was engaging with JD in a manner that could have caused him to behave as he did.

51 As already noted, the grievor had been trained on Air Canada's workplace violence and harassment Policy and Guidelines, and must be taken to have understood both what the Employer's expectations were of him as an employee, and of the possible consequences of breach of the Policy and Guidelines. In any event, in 2018, it is surprising that a 20 year employee in a flight attendant or service director position, employed by an international airline, whose job requires the provision of hospitality and safety-related services to people from around the world, would not understand that

it was entirely inappropriate and unacceptable to engage in the kind of discriminatory discourse that JD did.

52 I must also take into account that although the investigation occurred not very long after the flights in question, and the grievor had been advised of the precise nature of the allegations, he did not immediately admit to any of JL's allegations when he was interviewed by the complaint investigators. While he did eventually admit in his will say statement, filed in January 2020, shortly before this hearing, that he *may* have made some of the comments that JL had alleged in 2018, he was still not unequivocally admitting to all the allegations. He was also still obfuscating regarding the meaning of words he had used.

53 However, it is noteworthy that the grievor, of his own volition and at his own expense, took cultural sensitivity training in September 2018, shortly after his termination from employment. This shows that while he clearly acted in an entirely inappropriate manner in his discussions with JL in April 2018, he has realized that his behavior was unacceptable and did not meet the standards that both his employer and society in general expect in regards to respecting ethnic diversity.

54 I also note that although the grievor did not immediately admit to any of the allegations during the investigation, and did not show any remorse at that time, he has since come to understand that his comments were unacceptable, hurtful, and negatively affected JL; he has apologized for his behaviour and comments; and has offered to apologize directly to JL, should she permit him to do so. I accept that JD is remorseful about his actions, which gives me hope that he has learned a lesson, and would not behave in the same manner again if reinstated to employment.

56 This is a case in which progressive discipline of some sort should have been employed. While the grievor's comments to JL fall far below what is acceptable in the workplace, he is nonetheless a 20 year employee with a clean record. He has since his dismissal taken a cultural sensitivity course, and has realized that his comments to JL were hurtful and demeaning. In all of the circumstances of this case, I find this is one in which the suspension pending discharge was not warranted, and that a lengthy unpaid suspension should be substituted.

57 I accept and note that Air Canada takes the issue of harassment and discrimination very seriously, and does not tolerate such behaviour by its employees. The grievor should understand that the comments he made to JL in April 2018 were extremely unacceptable and that Air Canada and JD's fellow workers are not expected to tolerate such behaviour.

58 In the circumstances, for the reasons outlined above, and in light of the mitigating factors present in this case, I direct as follows:

- a) That an unpaid suspension from July 23, 2018 to February 26, 2019 be substituted for the suspension pending discharge;
- b) That the grievor be reinstated to employment, in the position of a service director, effective February 27, 2019;
- c) That the grievor be compensated for all regular income (subject to mitigation), benefits, and lost seniority from February 27, 2019 to the effective date of his reinstatement;
- d) That the Employer reintegrate JD back into the workplace as soon as possible following the issuance of this decision; and,
- e) That the Employer ensure that JL does not have to work with JD in the future.

59 I will remain seized of this matter to address any issues that may arise out of this award.