



Reasons for decision

WestJet Professional Pilots Association,

applicant,

and

WestJet, an Alberta Partnership,

respondent.

Board File: 31187-C

Neutral Citation: 2015 CIRB **782**

July 24, 2015

The Canada Industrial Relations Board (the Board) was composed of Ms. Ginette Brazeau, Chairperson, sitting alone pursuant to section 14(3) of the *Canada Labour Code (Part I—Industrial Relations)* (the Code).

Appearances

Mr. Jesse Kugler, for the WestJet Professional Pilots Association;

Mr. Geoffrey J. Litherland and Mr. Jeff Landman, for WestJet, an Alberta Partnership.

[1] On July 21, 2015, the WestJet Professional Pilots Association (WPPA or the union) filed an application with the Canada Industrial Relations Board (the Board), for an interim order pursuant to section 19.1 of the Code, requesting that the Board make certain orders regarding the communications of WestJet, an Alberta Partnership (WestJet or the employer) and of the WestJet Pilots Association (WJPA) with respect to the organizing campaign led by the WPPA and the representation vote that is currently being conducted by electronic means in accordance with the Board's order of July 16, 2015. In particular, the WPPA requests orders prohibiting WestJet from communicating with the pilots concerning the application for certification except as directed by the Board and prohibiting WestJet from providing support to the WJPA to engage in a representational campaign against the WPPA; it also seeks an order granting the WPPA the

right to issue one communication using the WestJet email in order to respond to the communications of WestJet and the WJPA.

[2] As this application raises issues that are time sensitive given that a representation vote is currently being conducted amongst the pilots of WestJet, and in accordance with section 14 of the *Canada Industrial Relations Board Regulations, 2012*, the application was dealt with on an expedited basis. Accordingly, the employer was invited to provide written submissions by close of business on July 22, 2015. A hearing was conducted by teleconference on July 23, 2015.

[3] The Board reviewed the extensive submissions and affidavits submitted by the parties in this matter. It also heard and considered the arguments made during the teleconference hearing. The Board will not recount the detailed facts and positions of the parties in these Reasons and will only refer to the key information necessary for its decision.

[4] In its application, the WPPA relies on an affidavit and information that were previously submitted in a complaint that was filed in February 2014 and that is currently being heard by a panel of the Board. Several days of hearings have been held in that matter and continuation dates are set for the month of November 2015. The employer objected to this evidence being accepted by the Board in this application, as the facts have been vigorously disputed and challenged in the context of the hearing.

[5] During the teleconference, the Board indicated that it would limit the scope of the evidence to the recent events that have occurred around the filing of the application for certification on June 22, 2015.

I. Analysis and Decision

[6] Section 19.1 of the *Code* provides:

19.1 The Board may, on application by a trade union, an employer or an affected employee, make any interim order that the Board considers appropriate for the purpose of ensuring the fulfilment of the objectives of this Part.

[7] In determining whether an interim order should be issued, the Board considers whether the complaint raises a serious issue; whether there is likely to be irreparable harm; the balance of convenience; and the broader considerations of constructive labour management relations. The Board maintains a broad discretion to issue interim orders and will do so where the Board determines that its intervention is necessary to fulfill the objectives of the *Code*. However, the Board exercises this discretion cautiously and in limited circumstances. In addition, the

granting of an interim order does not prejudice the merits of the underlying complaint (see *Bell Mobility Inc.*, 2009 CIRB 457). It is aimed at neutralizing the potential harm of an alleged unfair labour practice, pending the final determination of a complaint.

[8] In this case, the union submitted and reviewed a number of communications issued by the employer and by the WJPA that it alleges will have undue influence on the pilots' wishes with respect to union representation and that this will affect the outcome of the representation vote. It argues that the employer is permitting the WJPA to engage in a campaign against union representation by allowing communications to circulate on the employer's email system and is granting paid leave to WJPA representatives for the purpose of organizing "town hall" meetings.

[9] The WPPA submits that given the unique situation of this case, where the WJPA is an entity that is analogous to an incumbent union, the employer must remain neutral as it would be required in a displacement application. It states that its ability to access all pilots by email is critical since the competing entity (the WJPA) is free to advance its position freely on the employer's email system.

[10] The union submits that the Board's intervention is urgently required to ensure a leveled playing field during the voting period and ensure that the pilots can exercise their right to choose a union freely, without coercion, intimidation or undue influence.

[11] The employer objects to the intervention of the Board indicating that the culture at WestJet has always been one of open communications. It argues that there is nothing new or different in the context of the representation vote that would cause a chilling effect or interference in the pilots' right to exercise their freedom of choice. It argues that all the emails that have been discussed in this application are all permissible communication and cannot be considered as having a chilling effect on the pilots since there has been enormous freedom to express and communicate on all matters affecting them directly.

[12] The employer further states that even though it partially funds the WJPA to perform its functions, there has been no change to the longstanding practice of their use of the email system to communicate information relating to the pilots' workplace issues. It further argues that there is no evidence from any employees that there has been undue influence, threats or that they feel coerced in making a certain choice when exercising their right to vote.

[13] The employer also highlights the fact that the union has its own mechanisms to communicate with the pilots and provide all the information they wish in order to garner their support.

[14] The purpose of an interim order is to ensure “the fulfillment of the objectives” of Part I of the *Code*. One key objective of the *Code*, as enunciated in section 8, is the protection of the employee’s freedom to join a trade union of their choice and participate in its lawful activities. Another key objective of the *Code* is to prevent employers from using coercion, intimidation, threats, promises or under influence when the employees are exercising their right to join a union.

[15] In this case, the majority of the communications that were brought to the Board’s attention were made prior to the application for certification being filed. It is evident to the Board that the employees that are affected by the certification application are well aware of the representation vote and of the various venues that are available to them to obtain information. Although the extent of the employer communications and the extent of the employer’s liaison with the WJPA remain to be determined on the merits of the unfair labour practice complaints, the Board is unable to conclude that the allegations raised in the complaints warrant the intervention of the Board at this time to protect the pilots’ freedom to exercise their choice.

[16] It is not uncommon in organizing campaigns to have complaints of unfair labour practices that raise serious issues as to whether the employees can exercise their rights without coercion, threat or intimidation. However, not all complaints require the intervention of the Board. When considering the balance of convenience in this case, the Board has to carefully assess the potential impact of its intervention to ensure it does not create adverse effects or unintended consequences.

[17] In this case, the merits of the alleged unfair labour practices are under consideration by a separate panel of the Board. If the Board found merit to the complaints as to question the validity of the representation vote, significant remedies are available to it to address any consequences of those unfair practices and rectify the harm caused by the impugned conduct.

[18] The union has been able to communicate with the pilots using different mechanisms such as personal email addresses, a website and a twitter account. Certainly, during the period of the representation vote, it will want to communicate with all pilots to provide as much information as it can to try to gain their support and become their bargaining agent. However, there is no

evidence to suggest that the pilots are not free to access that information. In addition, the Board was not convinced that the statements and conduct of the employer are so far remote from previous communications or past practice as to conclude that it would cause undue influence over the pilots at this time. This case is not a situation like in *Transpro Freight Systems Ltd*, 2008 CIRB 422, where the actions of the employer were found to have had a direct impact on the organizing activities. In the present circumstances, the Board cannot conclude that there is actual or irreparable harm. Considering the materials and evidence before it and when weighing the parties' rights and obligations in the context of a representation vote, the Board is of the view that this is not a case where the Board's intervention is required.

[19] The Board concludes that it is not appropriate in this case to issue interim relief and dismisses the WPPA's request for an interim order.

Ginette Brazeau
Chairperson