



Canada Industrial Relations Board • Conseil canadien des relations industrielles

1 Front Street West, Suite 5300, Toronto, Ontario M5J 2X7
1, rue Front ouest, Pièce 5300, Toronto (Ontario) M5J 2X7
Fax: (416) 973-6543

Our File: 25717-C

Document No.: 228210

April 28, 2006

Mr. Kevin Gauthier
12- 53rd Street
Wasaga Beach, Ontario
L9Z 1W8

Dear Mr. Gauthier:

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 Kevin Gauthier, complainant,; alleging violation of section 37 of the Code by Air Canada Pilots Association, respondent; Air Canada, employer. (25717-C)

This acknowledges receipt of your complaint filed with the Canada Industrial Relations Board on April 12, 2006.

Since the interests of the employer could be affected by the outcome of a complaint of this nature, the employer has been added as a party to this complaint. A copy of the complaint is being forwarded to the respondent and the employer in accordance with the provision of the Canada Industrial Relations Board Regulations, 2001 (the *Regulations*). **Submissions from the respondent or the employer are not requested at this time.**

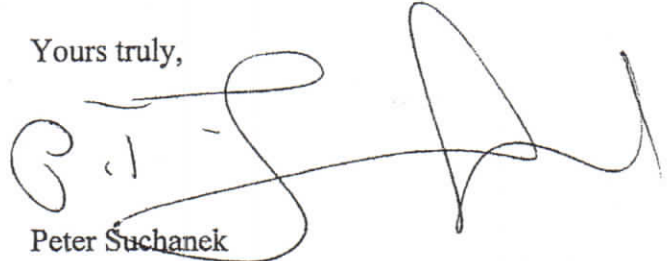
The complaint will be first referred to the Board to determine if the complaint contains sufficient information and grounds to establish that an apparent violation of section 37 of the *Canada Labour Code (Part I - Industrial Relations)* (the *Code*) has occurred.

If sufficient grounds to sustain a complaint are not established, a summary decision will be issued and the file will be closed. If the Board is of the view that a violation of section 37 of the *Code* may have occurred, the respondent and the employer will be offered an opportunity to file a response to the complaint in accordance with the provisions of sections 12 and 13 of the *Regulations*. The complainant will then have an opportunity to reply.

Please note that pursuant to section 16.1 of the *Code*, the Board may decide any matter before it without holding an oral hearing, even if such a hearing has been requested.

If you have any questions concerning this matter, please contact the undersigned at our Toronto office at (416) 973-3783.

Yours truly,

A handwritten signature in black ink, appearing to read 'P. Suchanek', written over a horizontal line.

Peter Suchanek
Regional Director (Registrar)- Ontario Region

c.c.: CIRB-Ottawa



Canada Industrial Relations Board • Conseil canadien des relations industrielles

C.D. Howe Building, 240 Sparks Street, 4th Floor West, Ottawa, Ontario K1A 0X8
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Our File: 25717-C

Document No.: 229770

June 29, 2006

CIRB Letter Decision no. 1444

BY PRIORITY POST

Mr. Kevin Gauthier
12- 53rd Street
Wasaga Beach, Ontario
L9Z 1W8

Air Canada Pilots Association
6299 Airport Road
Suite 205
Mississauga, Ontario
L4V 1N3

Attention: Mr. Kent Wilson
President

Air Canada
Law Department
Air Canada Centre, Zip 276
P.O. Box 7000, Station Airport
Dorval, Quebec
H4Y 1J2

Attention: Ms. Rachelle Henderson
Counsel, Labour & Employment

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 Kevin Gauthier, complainant,; alleging violation of section 37 of the *Code* by Air Canada Pilots Association, respondent; Air Canada, employer.

The Board, composed of Ms. Julie M. Durette, Vice-Chairperson, sitting alone pursuant to section 14(3)(c) of the *Canada Labour Code (Part I - Industrial Relations)* (the *Code*), considered the above-noted complaint.

This matter comes before the Board as a complaint filed pursuant to section 97 (1) of the *Code*. Mr. Kevin Gauthier (the complainant) alleges that the Air Canada Pilots Association (ACPA or the union) violated its duty of fair representation, pursuant to section 37 of the *Code*, when it failed to act swiftly or effectively in addressing safety issues raised by him and in addressing possible discipline or reprisal imposed as a result of his raising safety issues. The complainant also raises other related issues which he describes as a failure by ACPA's president to respond to requests he made between March 10 and November 22, 2005: a failure by ACPA's Pilot Assistant Committee Chair to implement the Emergency Response Program and a failure by ACPA's Master Executive Council (MEC) to properly represent him.

The complainant has been employed as a pilot by Air Canada (the employer) since February 1998. He claims that, in June 2004, while securing an aircraft at a boarding ramp just prior to deplaning passengers, the aircraft rolled backwards. The complainant believed this constituted a breach of safe aircraft operations and advised both Air Canada and ACPA accordingly.

The complainant submits that this incident, as well as other related safety issues raised have caused him to suffer from "situational anxiety". He has been on stress leave since that time and remains under medical care for a number of health related issues. The complainant's disability benefits through the Great West Life Insurance company were discontinued in early 2006.

The complainant claims that ACPA's representatives did not act swiftly or effectively to address the root cause of the safety related matters concerning air crafts in general and particularly, the aircraft "roll back" issue. He alleges that ACPA's failure to adequately represent him has aggravated or contributed to his disability and has caused significant irreparable damage.

The present complaint was filed on April 12, 2006. At the root of the present complaint is the alleged safety issue relating to the premature opening of the cabin door and resulting aircraft roll backs. In his complaint under the heading "Chronological summary of the facts and circumstances of this complaint", the complainant describes events taking place starting in the summer of 2003 up to the end of June 2004. Although the complainant refers to subsequent events, it appears he knew or ought to have known of the circumstances giving rise to the essence of his complaint by the end of June 2004. This is confirmed by the complainant when he states in his complaint that the date the union's alleged violation first came to his attention was in June 2004 - "...the breach of confidence and trust with ACPA occurred at the end of June 2004 and remains to the present date."

Section 97(2) of the *Code* establishes the time limitation for filing a complaint under section 37:

97.(2) Subject to subsections (4) and (5), a complaint pursuant to subsection (1) must be made to the Board not later than ninety days after the date on which the complainant knew, or in the opinion of the Board ought to have known, of the action or circumstances giving rise to the complaint.

The time limit for filing a complaint continues to run notwithstanding any good faith attempts by a complainant to otherwise resolve the matter with the union. Given the requirement of section 97(2) of the *Code*, the Board is of the view that the present complaint is untimely.

Notwithstanding its being untimely, the Board has nonetheless turned its mind to the possible merits of the complaint. The onus or burden of proof rests with the complainant to provide enough material facts, which on their own and if uncontested or uncontradicted, would allow the Board to reasonably conclude that the union's conduct was arbitrary, discriminatory or in bad faith and therefore in violation of the union's duty of fair representation under the *Code*. Accordingly, the Board first reviews the complaint as presented to decide whether it discloses sufficient evidence to

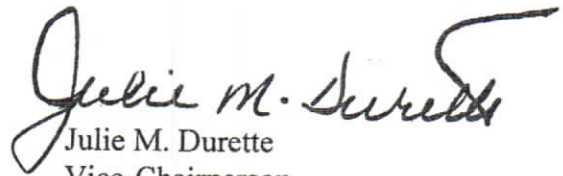
establish an apparent violation of the *Code*. If there is no reasonable likelihood that the complaint could succeed on the facts as alleged, then the complaint will be dismissed.

Despite a well prepared complaint including detailed information concerning alleged breaches of aircraft safety practices and ACPA's responsibilities under the terms of its constitution, specific allegations of arbitrary, discriminatory and bad faith conduct on the part of the union, that could amount to a breach of section 37 of the *Code* as found in Board jurisprudence, are not convincing. In addition, although the complainant may not be satisfied with the actions of Air Canada in respect of the safety issues and related concerns raised or with the nature of the representation provided by the union in this regard, such does not necessarily lead to a finding that the union has breached its duty of fair representation. The Board points out that it does not question the seriousness or validity of the safety issues raised by the complainant, however, in its determination of the present matter it must focus on an assessment of the complaint pursuant to its established process in order to determine whether it discloses sufficient evidence to establish an apparent violation of section 37 of the *Code*, rather than focus on the safety issues themselves.

In the present instance, based upon its review of the complaint form filed by the complainant, the accompanying documentation, including the extensive exchange of e-mails between the complainant and ACPA representatives, and the Board's own decisions on section 37 complaints, the Board finds that the facts as alleged by the complainant, even if accepted, do not support a sustainable case that the union has acted in a manner that is arbitrary, discriminatory or in bad faith.

Finally, the Board notes that the complainant sought and obtained in October and November 2005, independent legal advice in regards to the union's representation. Copies of letters received from both law firms consulted by the complainant were included with the complaint. Both referred to the time limitation under the *Code* to file a complaint. One letter encouraged the complainant to deal with the problem either with the union or with the Board and the other confirmed that, based on the information provided by the complainant, it did not appear that the union had failed in its duty of fair representation.

Consequently, and in accordance with section 16 (o.1) of the *Code*, the complaint is dismissed for lack of evidence.


Julie M. Durette
Vice-Chairperson

c.c.: Mr. Peter Suchanek, CIRB-Toronto

/gmc

Federal Court of Appeal



Cour d'appel fédérale

Facsimile Transmittal Form/Formulaire d'acheminement par télécopieur

TO/À

Name/Nom: Mr. Kevin Gauthier	(705) 429-3097
Mr. Headon and Ms. Rachelle Henderson	(514) 422-5829
Mr. Christopher C. Rootham	(613) 788-3667

Court No: A-332-05

FROM/DE

Name/Nom: Lisa Rodrigues Registry Officer Federal Court of Appeal 90 Elgin Street, 2 nd Floor Ottawa, Ontario K1A 0H9	Telephone No./ Téléphone: (613) 996-6795
	Facsimile No./ Télécopieur: (613) 952-7226
Date: February 28, 2007	Time/Heure:

TOTAL NUMBER OF PAGES/NOMBRE DE PAGES: 2

(Including this cover page/incluant le présent formulaire)

Comments/Commentaires

Please find attached a copy of the Order of the Court (Desjardins, Décary, Noël JJ.A.) dated February 26, 2007. A certified copy will follow by Registered Mail.

LR

Federal Court of Appeal



Cour d'appel fédérale

Date: 20070226

Docket: A-332-06

Ottawa, Ontario, February 26, 2007

Present: DESJARDINS J.A.
DÉCARY J.A.
NOËL J.A.

BETWEEN:

KEVIN GAUTHIER

Applicant

and

AIR CANADA PILOTS ASSOCIATION
and AIR CANADA

Respondents

ORDER

Since the applicant has not filed his affidavit by January 30, 2007, as directed by Décary J. on January 23, 2007, this application for judicial review is dismissed.

"Alice Desjardins"

J.A.

"R.D."

"M.N."

SUPREME COURT OF CANADA

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Summary

32021

Kevin Gauthier v. Air Canada Pilots Association, et al.

(Federal Court) (Civil) (By Leave)

Keywords

Administrative law.

Summary

Case summaries are prepared by the Office of the Registrar of the Supreme Court of Canada (Law Branch). Please note that summaries are not provided to the Judges of the Court. They are placed on the Court file and website for information purposes only.

Administrative law - Judicial review - Labour Relations - Unions - Whether the Canadian Industrial Relations Board erred in failing to provide due consideration to the s. 37 submissions - Whether the Federal Court of Appeal erred in instructing the Applicant to represent himself - Canada Labour Code, R.S.C. 1985, c. L-2, ss. 37, 97(2).

The Applicant, Kevin Gauthier, had been employed as a pilot by Air Canada. After an incident in June 2004, he advised Air Canada and the Air Canada Pilots Association (ACPA) of a breach of safe aircraft operations. As a result, the Applicant states he was on stress leave and under medical care. The Applicant claimed that ACPA's representatives did not act swiftly or effectively to address his concerns and that ACPA's failure to adequately represent him aggravated or contributed to his disability and caused significant irreparable damage. The Canada Industrial Relations Board dismissed his complaint and the Federal Court of Appeal dismissed the Applicant's application for judicial review.

Date modified: 2016-05-02

Kevin Gauthier v. Air Canada Pilots Association, Air Canada, 2007 CanLII 37207 (SCC)

Date: 2007-08-23

File number: 32021

Citation: Kevin Gauthier v. Air Canada Pilots Association, Air Canada, 2007 CanLII 37207 (SCC), <<http://canlii.ca/t/1svdr>>, retrieved on 2019-04-07

No. 32021

August 23, 2007

Le 23 août 2007

Coram: McLachlin C.J. and Charron and Rothstein JJ.

Coram : La juge en chef McLachlin et les juges Charron et Rothstein

BETWEEN:

ENTRE :

Kevin Gauthier

Kevin Gauthier

Applicant

Demandeur

- and -

- et -

Air Canada Pilots Association
and Air Canada

Association des pilotes d'Air Canada
et Air Canada

Respondents

Intimées

JUDGMENT

JUGEMENT

The application for leave to appeal from the judgment of the Federal Court of Appeal, Number A-332-06, dated February 26, 2007, is dismissed with costs to the respondent Air Canada Pilots Association.

La demande d'autorisation d'appel de l'arrêt de la Cour d'appel fédérale, numéro A-332-06, daté du 26 février 2007, est rejetée avec dépens en faveur de l'intimée Association des pilotes d'Air Canada.

C.J.C.
J.C.C.