IN THE MATTER OF AN INTEREST ARBITRATION

BETWEEN:

JAZZ AVIATION LP

and

UNIFOR LOCAL 2002
AIR CANADA BARGAINING UNIT
JAZZ AVIATION BARGAINING UNIT

and

AIR CANADA

SMALL BASES DISPUTE

ARBITRATOR:	Tom Hodges
AIR CANADA:	Christopher D. Pigott, Counsel Fred Headon, Assistant General Counsel Michael Abbott, Managing Director Labour Relations John Beveridge, Director Labour Relations
UNIFOR:	Jenny Ahn, Assistant to the National President Cheryl Robinson, President Local 2002 Lucy Allesio, Local 2002 Leslie Dias, National Representative, AC Bargaining Unit Frances Galambosy, AC Bargaining Chair Joel Fournier, National Representative, Jazz Bargaining Unit Denise Cochrane, Jazz Bargaining Chair
JAZZ AVIATION:	Peter Csiszar, Counsel Kirk Newhook, Vice President, Employee Relations
HEARING:	August 9, 2016
AWARD:	September 2, 2016

JURISDICTION

The parties agree that I have jurisdiction in this dispute in accordance with the Canada Labour Code and the following terms of reference.

JAZZ AVIATION LLP
And
AIR CANADA
And
UNIFOR and its LOCAL 2002

PREAMBLE

WHEREAS in June 2015, Air Canada and Unifor concluded a Memorandum of Agreement (hereinafter "2015 MOA") which provided for the termination of the secondment of Air Canada employees in various airport locations (hereinafter Small Bases) that are operated by Jazz. These locations are Thunder Bay (YQT), Saskatoon (YXE), Regina (YQR), Quebec (YQB), Moncton (YQM), Saint John (YSJ) and Charlottetown (YYG).

WHEREAS in the spring of 2016, Air Canada employees made elections pursuant to the 2015 MOA. They could either select to relocate to an Air Canada mainline location, accept a voluntary separation package or retire from Air Canada.

WHEREAS on February 8 2016, Jazz issued a letter offering employment to all former seconded Air Canada employees working in the Small Bases who applied to be hired at Jazz.

WHEREAS on February 9, 2016 Unifor filed two (2) grievance against Jazz contesting the wages and the seniority offered to former Air Canada employees who were hired at Jazz (402-03-16 and 402-02-16).

WHEREAS on April 18 2016, Unifor filed a grievance against Air Canada contesting the enforceability of the 2015 MOA (P-ACC-04-16).

WHEREAS the three (3) grievances were heard by Arbitrator Martin Teplitsky who issued an interim decision on June 9, 2016, but was unable to issue a final decision.

WHEREAS in his decision of June 9, 2016, Mr. Teplitsky made clear that he would hold a hearing and make a further award to determine what orders should follow the June 9, 2016 decision in terms of variations from his January 2010 award and the agreement of Unifor and Air Canada.

WHEREAS in the course of a teleconference hearing held on June 29, 2016, Mr. Teplitsky advised that notwithstanding his award of June 9, 2016, the 2015 MOA could proceed with variations ordered by him.

WHEREAS Arbitrator Teplitsky passed away before a final decision was rendered on the grievances.

NOW THEREFORE the Parties agree as follows:

1. The preamble is an integral part of these terms of reference.

2. The Parties agree that Arbitrator Hodges will be appointed to conduct an interest based arbitration that is limited to the following questions:

(a) What will be the wages applicable to the former Air Canada employees who are hired at Jazz?

(b)What will be the seniority rights applicable to the former Air Canada employees who are hired at Jazz?

3. The hearing date will be convened within ten (10) days of the signing of these terms of reference.

4. Two (2) days prior to the hearing, each of the parties may submit a written brief outlining their position on the items identified in paragraph 2, above, and will not, on the topics of wages and seniority rights, be bound by any previous positions submitted before Arbitrator Teplitsky.

5. The Parties request that that the arbitrator issue his decision in this matter no later than three (3) days following the hearing date.

6. The Parties agree that the employment relationship with Air Canada will cease, on the day of the election or deemed election as per paragraph 8, for those employees who elect to take a voluntary separation package as well as for those who have elected to retire.

7. Air Canada commits to compensate and provide benefits until the date that Air Canada employees seconded to Jazz make their election or are deemed to have accepted their prior election pursuant to paragraph 8 below, and who have not received a work schedule at Jazz, all of their respective wages and benefits as if they were properly scheduled during that period. With respect to those former Air Canada employees who apply to work at Jazz, Air Canada agrees to further compensate these employees in the same fashion until their respective start date at Jazz. With respect to Air Canada employees who have elected or elect to relocate to another Air Canada workplace, Air Canada agrees to compensate and provide all such employees their wages and benefits if their relocation causes them absence from work.

8. This compensation is contingent upon Unifor agreeing to hold in abeyance CIRB file 31722-C (suspend all timelines for the filing of a response), during the

arbitration process, the implementation of the arbitrator's award, and then withdrawal when the award is fully implemented.

9. Once the decision is issued, Air Canada will grant the former employees who were seconded to the small bases an opportunity to resubmit their election under the 2015 MOA, and decide to relocate to an Air Canada mainline location, to accept a voluntary separation package, or to retire from Air Canada. The elections must be completed within four (4) days of the release of the arbitrator's award. If an employee fails to resubmit their election form, Air Canada will process their election based on their choice submitted in the spring of 2016

10. Jazz agrees that it will engage in active employment, subject to the terms of the arbitrator's award, all former seconded Air Canada employees who apply for such employment, forthwith after Jazz receives such an application. The award of the arbitrator will be final, binding and is not subject to further approval or ratification by any of the Parties. The Parties further agree that the award of the arbitrator will fully and finally resolve all of the issues raised in the proceeding before Arbitrator Teplitsky.

The four parties to the previous Small Base agreements, understandings and arbitration decisions, have agreed to the terms of reference set out above. In order to provide the required expedited award this decision was originally provided without the reasons contained herein. The reasons contained herein now form the completed award.

This decision flows, in part, from two grievances filed by Unifor against Jazz contesting the wages and the seniority offered to former Air Canada employees who were hired at Jazz. It also flows from a grievance Unifor filed Air Canada contesting the enforceability of the June 2015 MOA. The grievances followed the implementation of the June 2015 Memorandum of Agreement by Air Canada.

The operation of the small bases with both Air Canada and Jazz employees resulted from the restructuring of Air Canada and its subsidiaries underwent pursuant to the *Companies' Creditors Arrangement Act* (CCAA) following its decision to withdraw service from nine small bases in 2005. A resulting grievance was heard by Arbitrator Teplitsky. In his 2005 award he provided direction for the parties. On January 2010, Arbitrator Teplitsky dealt with a number of issues resulting in a "labour relations fence" being created to protect the conditions of the Air Canada employees while accelerating attrition. He also recognized the protections could be changed by agreement of the parties in the future.

The June 13, 2015 Memorandum was concluded as part of national negotiations by the Unifor Local 2002 committee representing the Air Canada bargaining unit. The agreement set out:

June 13, 2015

2015 Collective Bargaining - Item C47

As agreed between the parties, all current Air Canada employees seconded to Jazz in C stations (YQB, YQM, YQR, YQT, YSJ, YXE, YYG) will cease employment with Air Canada. Employees must notify Air Canada in writing of their choice by March 1, 2016. The individuals' departure will conclude no later than June 30th 2016 and will occur in the following manner:

- Employees who are currently working as retirement phase-in employees will have the following options:
  1) Sever employment from Air Canada; or
  2) Notwithstanding Article 12, transfer at their own expense to another Air Canada base (YVR, YYC, YEG, YWG, YYZ, YOW, YUL, YHZ, YYT).

- Employees currently working at YSJ airport (who are not retirement phase-in employees) will have the following options:
  (1) Transfer to the YSJ call centre; or
  (2) Notwithstanding Article 12, transfer at their own expense to another Air Canada base (YVR, YYC, YEG, YWG, YYZ, YOW, YUL, YHZ, YYT).
  (3) Resign and/or retire; or
  (4) Apply for a separation package in accordance with Letter of Understanding no 18 of the Collective Agreement as prescribed below.

- Employees at the other bases enumerated above will have the following options:

  1) Apply for a separation package in accordance with Letter of Understanding no 18 of the Collective Agreement:
  Severance allowance of three (3) weeks' pay at their current rate of pay for each full calendar year of service, or parts thereof, up to a maximum of sixty- nine (69) weeks' pay.

SEVERANCE ALLOWANCE OPTIONS

Options for Pensionable Employees

a) Employees under age 55 at time of retirement may elect to receive "age make-up" at a rate of fifty percent (50%) of the months between their retirement age and 55 to a maximum of sixty (60) months. Eight (8) weeks of the allowance shall be converted for each year of "age make-up" required for pension reduction purposes under age 55.
b) Lump sum cash payment.
c) Time on payroll at full salary.

d) Time on payroll at half salary.
e) Any combination of the above, except that options c) and d) in total may not exceed twenty-four (24) months.

Options for Non-Pensionable Employees
a) Lump sum cash payment.
b) Time on payroll at full salary.
c) Time on payroll at half salary.
d) Any combination of the above, except that options b) and c) in total may not exceed twenty-four (24) months

Additional Provisions for Non-Pensionable Employees
a) Continuation of Supplementary Health Insurance, Dental Plan, Group Life Insurance and Vision Care Plan for twelve (12) months beyond separation or re-employment with another company, whichever is the earlier.
b) Two (2) Air Canada passes for the employee and eligible dependents for each year after separation for a period equal to the number of completed years of service at date of termination from the active payroll.

Or

(2) Notwithstanding Article 12, transfer to another Air Canada base in accordance with Air Canada's relocation policy (paid move to YVR, YYC, YEG, YWG, YYZ, YOW, YUL, YHZ, YYT, YSJ Call Centre).

Furthermore, LOU 26 and MOU 10 are deleted and all arbitration decisions related to small bases are null and void.

On September 21, 2015, Mr. Pierre Bourque filed a complaint with the Canada Industrial Relations Board alleging a breach of Unifor's duty of fair representation under section 37 of the *Code*. On February 10, 2016 the Board found the allegations without merit in that a *prima facie* case had not been made. The complaint was dismissed by a unanimous decision of the Board. The significance of the decision will be address later in the reasoning for this decision.

UNIFOR LOCAL 2002, AIR CANADA BARGAINING UNIT POSITION

The Unifor Air Canada Bargaining unit representative argued that a unique hybrid labour relations model existed in a special environment at the small bases. The union submits that the Air Canada employees at those locations were in the service of two employers. Jazz which managed the small base operations and Air Canada which compensated the employees.

The union argues that the model had been established and applied by Arbitrator Teplitsky, first in his

award of April 4, 2005 and thereafter. The governing principle is simple: *"No harm should be done"* to the affected small base employees following the transfer of operations to Jazz Aviation. It maintained that Arbitrator Teplitsky was cognizant of the tenuous financial condition of Air Canada in this matter when it was established following the Air Canada bankruptcy. The union argued that the financial condition of Air Canada has completely changed in recent years. While accepting Air Canada's decision to exit the small bases, the union argues that there is no obstacle to the full recognition of the basic principle of no harm being done to Air Canada employees.

The union argued that Mr. Teplitsky, the supervisory arbitrator/mediator appointed by the Court to oversee the small bases environment, viewed the transition of Air Canada small bases to Jazz management and control as a partial "sale of business" as that phrase is contemplated under Part One of the Canada Labour Code. The transition of the small bases was triggered by the reformulation of the airline's business due to Air Canada's insolvency as recognized in Arbitrator Teplitsky's April 2005 award.

The Union argued that its preferred position is that Air Canada ought to remain the employer of all AC employees in the small bases and that they continue under the terms of the January 2010 award. In the alternative, the union argues that the Memorandum of Agreement of June 2015 should be restructured and supplemented with a set of provisions that provide interested Air Canada small bases employees the opportunity to elect to continue employment at their home base with Jazz and be recognized as a Jazz employee since February of 2005 with the seniority and applicable pay rate as of that date.

The Union maintains that 61 full and part time employees are affected by Air Canada's decision to close the small bases. All 61 have made elections under the attached *C Station Employee Election Form* which was drafted and circulated pursuant to the June 2015 memorandum of agreement. Furthermore 22 of the 61 affected employees have requested a voluntary Separation Package, severance allowance (VSP) and 29 employees have elected to continue employment with Air Canada by relocating to another mainline base, with relocation assistance, if eligible. Approximately 8 to 12 employees who were hired with Air Canada at various times from 1975 to 2000, would seek to remain employed by Jazz at their respective home base largely dependent on the wage and seniority outcome of this award. All of the affected Air Canada employees at the small bases were hired before the company fell into CCAA protection.

The union submits that all Air Canada employees have sufficient seniority such that today they earn the top rate of $26.87 an hour under the AC Unifor collective agreement. Employees classified as a Lead Customer Sales and Service Agent obtain a ten per cent premium in addition to the above mentioned wage

rate. The union argues that the Jazz offer of employment to the affected employees at a pay grade one step higher than a new hire rate of $11.23 an hour is a significant and unjustified pay cut.

The union argues that all affected employees are members of the defined benefit pension plan. This is in contrast to the Jazz plan which provides that all employees are enrolled in a defined contribution pension plan. All Jazz employees are today required to contribute six per cent of their monthly earnings, and likewise, the employer, makes the same contribution to the employees account. The union also submits that the Air Canada collective agreement provides employees under the age of 65 a significantly more generous employer paid Group Life, Supplementary Health, Dental, Paramedical, Vision care set of programs and Vacation provisions.

The union argues that in light of the above, and in particular the principle that no harm be done that Air Canada employees who elect to remain at their respective home base, should be integrated into the Jazz collective agreement according to the following terms:

1. Affected employees should be recognized as historical employees (and not new hires) of Jazz, as a continuation and in recognition of their special status as "joint employees" of Air Canada and Jazz since at least February 24, 2005.

2. Wage rate of 23.04 dollars an hour.

3. The Jazz seniority of Air Canada employees should be fixed at February 24, 2005.

4. Compensation for part time employees, due to the scheduling rules of the Jazz collective agreement, should reflect the historical average of what they would have earned.

UNIFOR LOCAL 2002, JAZZ BARGAINING UNIT POSITION

The Unifor representative of the Jazz bargaining unit argues that it is a relatively small unit with approximately 920 members encompassing Jazz customer service and aircraft services divisions. This is in contrast to Unifor Air Canada, which comprises a unit of over 4000 members. Full time employment is very difficult to obtain at Jazz. From the point of ratification of the Jazz CBA in January 2013, Jazz has hired only 50 full time positions out of a total of 261 total new hires. In addition approximately 19% of all new

hires were hired full time in the last 4 years.

The union argues that should I award any seniority credit to the former AC employees, it would have a profound impact on the Jazz unit. For example, should new arrivals from AC be awarded a notional 2005 seniority date, this would place these new AC arrivals ahead in seniority of 60% of members. Specifically, they would have greater seniority than 553 of the current Jazz membership. In contrast, a 2010 seniority date would put the AC new arrivals ahead in seniority of 46% of our members. Therefore they would have more seniority than 416 of current Jazz members. A back dated seniority of 2015 would put the AC new arrivals ahead in seniority of 22% of members, with greater seniority than 200 of current Jazz members.

The union argues that in 2010 Arbitrator Teplitsky held Air Canada employees shall not retain or acquire any recall rights to a small base. Also, he held that Air Canada employees working in a small base may transfer into any Jazz station only if they sever their employment with Air Canada and become a new hire.

The union submits that once the former AC employees become Jazz new hire employees, they will gain full rights within the Jazz Collective Agreement. These rights include access to the below the wing division, to which they have never previously had access. They will have transfer rights to all of the bases within the Jazz organization, also which they never had previously. A significant credit in seniority to the Air Canada employees would result in them gaining priority for transfers ahead of current part-time members who are waiting for full time employment. The length of time required to establish full time employment would increase, and will ultimately result in a loss of income for Jazz employees.

The Jazz bargaining unit submits that it is profoundly unjust and inequitable that former AC employees be given seniority credit in the Jazz unit, when members who have been laid off from within the Jazz bargaining unit are not afforded seniority rights outside of their own division. An award of seniority to new arrivals from AC would have a profound effect on the bidding results of present Jazz employees.

The Jazz bargaining unit argues that any vacancies that Jazz currently has available, or had available after

completing of the Letter of Transfer process within Jazz, be offered to AC employees who have severed from Air Canada, thereby making them wholly Jazz employees. That the vacancies that have been accepted by Jazz employees be upheld. That no current Jazz member have current or future monetary loss as a result of the chair's decision. The union argues that no member from a different bargaining unit should bring, receive credit for, or maintain seniority accrued under another Agreement into the Jazz bargaining unit.

JAZZ AVIATION LP POSITION

Jazz argues Arbitrator Teplitsky passed away before rending a final decision on the grievances before him, however the parties agreed this arbitrator would address and decide:

(a) What will be the wages applicable to the former Air Canada employees who are hired at Jazz?

(b) What will be the seniority rights applicable to the former Air Canada employees who are hired at Jazz?

Jazz's argues that its position on the two questions in this arbitration are consistent with its previous submissions to Mr. Teplitsky made on March 11, 2016 and March 30, 2016 before him:

> It was communicated that the LOT process per the Jazz CBA would be followed for all vacancies resulting from the ratification of the AC collective agreement. Any remaining positions would be offered to AC employees who were looking to gain employment with Jazz. Higher wages for the AC employees were discussed, and taken away by Jazz, as they needed to speak with the other party involved, AC.
>
> The confidential letter dated February 8th, 2016 from Kirk Newhook to Joel Fournier was sent as a matter of dispute resolution, based on the conversations that had taken place on January 20th, 2016. The letter being nothing more than a confirmation that Jazz would be able, per Unifor's request, to hire the AC agents at a slightly higher wage, bringing other employees at the base up to this level, as to be in line with the Jazz collective agreement. Seniority was only mentioned in the capacity that it was not an option for the AC agents to bring any seniority into a separate bargaining unit. This was made clear to both Jazz the company and Unifor acting on behalf of the AC employees.

Jazz argues that the 2015 agreement between Air Canada and Unifor had the effect that Air Canada employees who did not choose the option of transferring to another Air Canada base ceased to be Air Canada employees. Thus their only available option was to apply to Jazz and be considered as a new hire.

Jazz submits that Mr. Newhook's February 8th letter sets the limits of Jazz's willingness to hire former Air Canada employees who wished to remain at their base (without interviews/screening) as new hires for vacancies that existed after the Jazz Collective Agreement LOT process was completed. Jazz offered to pay such candidates a pay grade one step higher than any new hire. Jazz continues to stand by its February 8th letter which clearly involves former Air Canada employees being hired as new hires.

Jazz submits that an Air Canada employee filed a complaint under Section 97(1) of the *Canada Labour Code* alleging that Unifor breached its duty of fair representation under Section 37 of the

Code. (50 other employees gave that complainant the authority to act on their behalf). The CIRB issued a decision dismissing the complaint on February 10,2016. The CIRB specifically dealt with the Complaint's challenge to the June 15,2016 agreement between Air Canada and Unifor which the CIRB noted was ratified by the Air Canada Unifor membership. The CIRB found that the complaint was without merit and that Unifor by entering into the agreement with Air Canada, which resulted in the loss of employment for some members did not breach the *Code.*

Jazz argues that former Air Canada employees who wish to remain at their former bases can apply to Jazz as new hires.

AIR CANADA'S POSITION

Air Canada argues that it has been gradually withdrawing from small bases for a decade and that the June 13, 2015 agreement with Unifor was a completion of that process. It submits that it did not agree to any obligations to the Small Base employees after their employment with Air Canada ended.

Air Canada submits that this arbitration is clearly limited to the questions of wages and seniority rights for employees previously seconded to small bases operated by Jazz, as required by the Terms of Reference. It maintains that the June 2015 agreement negotiated with Unifor is clear and unambiguous in providing that all small base employees would cease employment with Air Canada no later than June 30, 2016. The affected employees would have defined entitlements under the agreement and all arbitration decisions related to small bases are null and void.

Air Canada argues that it anticipated significant long term savings as a result of its withdrawal from the small bases. It maintains that these savings were credited to Unifor in bargaining which were used towards benefits in other areas. Air Canada submits that it had no involvement in Jazz's decision to offer employment to the small base employees. Further, this arbitrator does not have the authority previously given to Arbitrator Teplitsky to oversee the small base operations.

DECISION

Evidence before this arbitrator established that Arbitrator Martin Teplitsky served a long and valued role in the resolution of numerous disputes related to the unique staffing of small bases through a Mediation/Arbitration process. Many of his decisions were short and concise bottom line awards with little or no reasons provided. It was a productive process valued by the parties as evident by its continued acceptance for over ten years. He maintained an approach recognized as "doing no harm" while at the same

time advising the union that the attrition of Air Canada employees at small bases needed to accelerate. In 2010 he noted that there was no money available at that time to assist in the acceleration.

On June 13, 2015, Air Canada and Unifor Local 2002 reached agreement during collective bargaining to end the secondment of Air Canada employees to small bases. Notwithstanding this agreement, Unifor Local 2002 met with Jazz aviation in an effort to facilitate affected Air Canada employees having the opportunity to remain at the small bases. On February 8, 2016, Jazz offered to hire affected employees at one step above the new hire rate. Unifor filed a grievance contesting the offer made by Jazz. On April 18, 2016, Unifor filed a grievance against Air Canada contesting the enforceability of the June 13, 2015 MOA. On May 28, 2016 a hearing was held resulting in *Jazz Aviation LP and Air Canada and Unifor Local 2002,* M. Teplitsky [2016](Unreported). Arbitrator Teplitsky found:

> ....All parties did not sign on to the Air Canada and Unifor's June 2015 agreement and I did not make an award. In the result, their agreement is ineffective.

On June 27, 2016, Air Canada took the position that Arbitrator Teplitsky was *Functus* following his May 28, 2016 award. However, Arbitrator Teplitsky later advised the parties in a conference call that that the June agreement could be effective with variations to be determined by him at hearing to be scheduled. On July 14, 2016, Arbitrator Martin Teplitsky passed away without holding a hearing to determine the appropriate variations. On July 28, 2016, the parties agreed to specific Terms of Reference contained in this award, in appointing me to hear this matter.

On August 9, 2015, the four parties to this unusual dispute made extensive written and oral submissions. Due to the fact that the affected employees were locked in a difficult situation it was agreed that after reviewing the submissions I would issue an award as soon as possible without reasons. A bottom line decision was provided on August 13, 2016. The reasons for decision are now contained in this award.

A review of numerous arbitration awards of Arbitrator Teplitsky and correspondence between the parties relating to "small bases" or C bases consistently refers to Air Canada Bargaining Unit members as "Air Canada employees". While it is clear that the affected employees were under the supervision of Jazz management, there is no evidence of a recognition by Air Canada or Jazz of an employment relationship with Jazz. Equally important is that the parties have chosen the term "Air Canada employees seconded to Jazz" in providing the Terms of Reference for this arbitration.

This continued recognition by the parties of the employment relationship of the affected employees with Air Canada is the basis for my finding that the former Air Canada CSA's working at Jazz were seconded employees of Air Canada while at Jazz Aviation.

In *Bourque et al,* 2016 CIRB LD 3562, the Board examined the June 2015 small base closure agreement while considering allegations of a section 37 violation. The Board found:

> The evidence shows that the union considered the problem of its members at the small bases at the bargaining table. In the end, it determined that its decision, while very difficult to make, took the overall membership into account even though it would result in the loss of employment for some members with several years of seniority. While the complainants are dissatisfied with the manner in which the union represented their interests in bargaining because of the outcome and feel prejudiced by the position the union took, this does not mean that Unifor's approach was a breach of the DFR. Therefore, there is no cause for the Board to intervene.

In reviewing the section 37 *Code* complaint the Board was properly within its sole jurisdiction in making the determination not to intervene. I have fully reviewed the evidence and case law submitted to determine my authority to significantly amend the June 2015 agreement. The Board decision in *Bourque supra* and the clear Terms of Reference for this arbitration are the foundation for my finding that the former Air Canada CSA's seconded to positions at Jazz are bound by Air Canada's decision to cease operations at small bases and the provisions of June 13, 2015 related agreement. In addition, I am without jurisdiction to stop the Air Canada decision to close the affected bases or to amend the agreement of June 13, 2015.

It is within my jurisdiction as provided in the Terms of Reference to determine the rate of pay for the affected employees who elect to remain at Jazz. Jazz has offered the affected employees a wage rate one step above the new hire rate. The affected employees are experienced and trained. The effect of these individuals remaining in their small bases is not within the bounds of a new hire for labour market economic pressures as contemplated in Article 5.01.01 of the Unifor – Jazz collective agreement. Jazz has recognised the value of the experience and training of the former Air Canada CSA's as set out in Jazz's offer of employment for the affected Air Canada CSA's to Unifor in Mr. Newhook's letter of February 8, 2016.

The affected employees are not remaining at Jazz because of local labour market pressures. They are remaining because of their extensive skills and experience as Customer Service Agents recognized by both

Air Canada and Jazz. It is for that reason, former AC seconded employees, who elect to hire at Jazz will be placed at step 11 of the CSA Scale for New Employees.

The issue of seniority at Jazz for employees who elect to remain at small bases is complex. They have provided extensive service to Air Canada and Jazz. Arbitrator Teplitsky repeatedly rendered decisions based on a no harm principle in dealing with employees of both companies at these bases. It is a principle which should continue while recognizing that affected employees who sever their employment with Air Canada under the terms of the June 2015 agreement will be entering a new relationship.

As part of the new relationship the parties have agreed that I have jurisdiction over seniority in accordance with the agreed Terms of Reference for this arbitration. In addition I have jurisdiction to resolve any grievances filed by Unifor relating to the June 2015 agreement and former Air Canada CSA's who elect to enter employment with Jazz regarding severance payments or related provisions. In accordance with arbitrator Teplitsky's decisions of June 9 & 29, 2016, the June 13, 2015 agreement is effective with the following variations. Consistent with arbitrator Teplitsky's principle of do no harm is the continued need for a labour relations "fence" around affected former Air Canada employees.

Seconded Air Canada CSA's who elect to sever their employment with Air Canada under the terms of this award will be returned to their previous base of work and will be subject to the following conditions when they start their employment relationship with Jazz;

1. Former Air Canada CSA's will begin to accrue Jazz seniority in accordance with the date at which they cease to be AC employees, this will result in these employees all having the same jazz seniority date but will be ranked respecting their seniority from the AC Unifor seniority list.

2. The Jazz seniority date will govern the bidding of schedules, vacation, awarding of vacancies etc.

3. Notwithstanding the forgoing seniority provisions, former Air Canada CSA's who elect to accept employment with Jazz will be returned to their status and entitlement at their former base that they held prior to the transfer of the base to Jazz. They will maintain this status as long as they stay in that base.

4. In the event of a layoff, reduction or bumping into one of the former Air Canada "C" or bases I will remain seized with respect to the application of the application layoff language as it pertains to these former AC employees and their job status.

5. For clarity a full time permanent seconded Air Canada employee as of June 1st who elects employment with Jazz will be returned to their previous full time permanent position at their former base despite that their Jazz seniority number would otherwise not entitle them to hold that position. Similarly, a permanent part time seconded Air Canada employee will be returned to that position at their former base and will only be entitled to the hours of work that were available to them under the part time work rules of the Air Canada agreement.

6. Part time employees eligible to work under the above rules will only select additional hours above their Air Canada guarantee once all Jazz part time employees with a higher Jazz seniority date have selected.

7. If any of the former Air Canada seconded employees elect to use their new Jazz seniority to bid on vacancies outside their base they will lose the rights afforded them under the paragraphs above.

8. In accordance with other terms of this award for the purposes of vacation accrual, the former Air Canada seconded employees will be entitled to the vacation accrual date of 2005.

In my original bottom line award of August 13, 2016, it was recognized that this process has implications in undoing the vacancy awards that were processed by Jazz for positions that were made available by the vacant positions left from the Air Canada seconded employees. Since that award I have addressed questions relating to the implementation of the award through Supplementary Awards. Those awards remain in effect. The process for returning affected employees to their previous positions is in progress at this time, and I will remain available to address specific issues on an expedited basis.

I remain seized with respect to the application and interpretation of this award.

Dated this 2nd day of September, 2016.

Tom Hodges
Arbitrator