



## Reasons for decision

Global Helicopter Pilots Association,

*applicant,*

*and*

CHC Global Operations, a Division of CHC  
Helicopters International Inc.,

*employer.*

Board File: 26661-C

CIRB/CCRI Decision no. **402**

March 26, 2008

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The Board was composed of Elizabeth MacPherson, Chairperson, Douglas G. Ruck, Q.C., Vice-Chairperson, and Judith MacPherson, Q.C., Vice-Chairperson. Pursuant to section 16.1 of the *Canada Labour Code (Part I - Industrial Relations)* (the *Code*), the Board may decide any matter before it without holding an oral hearing. Accordingly, this matter was considered and decided on the basis of the written materials filed by the parties.

### Counsel of Record

Mr. Denis W. Ellickson, for Global Helicopters Pilots Association;

Mr. R. Paul Fairweather, for the CHC Global Operations, a Division of CHC Helicopters International Inc.

## **I - Nature of the Application**

[1] This is an application for reconsideration of a preliminary decision as to jurisdiction (*Global Helicopter Pilots Association (2007)*, as yet unreported CIRB decision no. 396), rendered by the Canada Industrial Relations Board (the Board) on December 11, 2007 in the context of an application for certification filed by the Global Helicopter Pilots Association (the union), for a bargaining unit of 275 helicopter pilots located at various bases throughout the world. It is noted that neither the employer nor the union have raised any issues with the findings of fact made by the original panel of the Board.

## **II - Background**

[2] The preliminary issue before the original panel was whether the pilots, who are the subject of the application for certification, are employed on or in connection with the operation of a federal work, undertaking or business that is within the legislative authority of Parliament.

[3] For the sole purpose of the preliminary decision, CHC Global Operations agreed that it was the employer of the employees in the proposed bargaining unit. The original panel of the Board was informed that CHC Global Operations is a Canadian business headquartered in Richmond, British Columbia which provides chartering helicopters services to the oil and gas industry operating in Canada and around the world. CHC Global Operations is not an incorporated entity, it is a division of CHC Helicopters International Inc. (CHII). The parent company of CHII is CHC Helicopters Corporation.

[4] The original panel noted that all of the employees in the proposed bargaining unit are helicopter pilots. CHC Global Operations recruits, hires and trains pilots from various countries and conducts its operations from different bases all over the world, in conjunction with certain local companies. With the exception of the base in Halifax, Nova Scotia, the pilots fly in different countries around the world. Flights in those foreign countries are domestic, not international.

[5] The Board also found that all of the pilots are hired in Canada and perform the same work under the same terms and conditions, although subject to some local variations. Some of the pilots are either Canadian citizens or residents of Canada, while others are from the United Kingdom, Australia, Europe, Indonesia, etc. Some of the pilots have little or no attachment to Canada, and a number of the non-Canadians work in countries in which they are neither residents nor citizens (e.g., a pilot from the United Kingdom working in Cameroon). These pilots are referred to by the parties as “expats.” The union’s proposed bargaining unit includes all of these pilots, but would exclude “foreign national pilots employed by CHC partner companies (such as Thai Air Services)”. The exception proposed by the union is intended to apply to pilots who are citizens and/or residents of the country in which they work.

[6] On the basis of the parties’ admissions and the evidence that was presented, the original panel determined that CHC Global Operations is a Canadian company carrying on the business of chartering helicopters to service the oil and gas industry, and that it operates in Canada and around the world. The Board found that CHC Global Operations is engaged in aeronautics and is therefore a business or undertaking that falls within the legislative authority of Parliament. Consequently, the original panel determined that this Board has the initial jurisdiction to entertain an application for certification that includes the different categories of pilots employed by CHC Global Operations in its various operations.

[7] In making that determination, the original panel recognized that the Parliament of Canada does not have regulatory authority over local companies with which CHC Global Operations is associated, such as Thai Air Services or Aero Contractor of Nigeria, as they are engaged in domestic flying within their own countries, governed by the laws of Thailand and Nigeria respectively. The original panel’s focus was on the extent to which CHC Global Operations had extended its own business and operations extra-territorially, in order to enable the Board to determine whether the pilots who work in these extra-territorial operations could be said to be employed on or in connection with the operation of a federal business that is subject to the *Canada Labour Code*.

[8] The December 11, 2007 decision was merely a preliminary determination as to jurisdiction, and did not deal with the fundamental issue of who the “true” employer of the pilots is. In *Global*

*Helicopter Pilots Association (2007), supra*, at paragraphs 104 and 105, the Board stated:

[104] In applying the various factors, each of these different groups of pilots have some but differing levels of connection with Global Operations. However, as can be seen by the nature of some of the factors and criteria to be considered, the evidence and criteria overlap considerably with the other fundamental issue of who is the true employer, which has not yet been heard by this Board. If it is found on evidence to come that the local entities are in fact the true employer of some of the affected pilots, this fact would change or affect the overall analysis. The Board has come to believe that it is essential to hear the parties on this issue of true employer before a final determination can be made on the issue of the Board's jurisdiction over all of the different pilots concerned.

[105] Accordingly, the Board concludes that, on the basis of the parties' admissions and the evidence as presented thus far, it is possible to rule that the Board has the initial jurisdiction to entertain an application for certification that includes the different categories of pilots who operate out of the various operations set out in this decision. **However, the Board has also concluded that a final determination in regard to this matter ought to await the Board's determination in regard to the issues of true employer and appropriateness.** (Emphasis added)

### III. The Parties' Positions

#### THE EMPLOYER

[9] In this reconsideration application, the employer alleges that the original panel erred in law by concluding that the employer itself is a federal work, undertaking or business. They concede that the employer's operations in Halifax, Nova Scotia constitute a federally regulated work, undertaking or business, but contend that each of the employer's various operations (i.e., those in Nigeria, Thailand, Chad, Vietnam, the Philippines, Azerbaijan and so on) have to be considered separately, or alternatively, they have to be related back to the operations in Halifax, not to the employer. In the employer's submission, the fundamental question is whether Parliament has legislative authority over the particular operation itself - the work being done and the employees doing it.

[10] The employer submits that the Board committed a fundamental error when it found jurisdiction in the person of the employer. It argues that case law and the wording of the *Code* requires that Parliament have legislative authority over the "operation", and not the employer *per se*. In the employer's submission, in order to conclude that the Board has jurisdiction over operations that they contend are contained entirely within a foreign jurisdiction, the Board must find that Parliament has legislative authority over those particular operations. Accordingly, the employer submits that the

original panel erred when it found that Parliament has legislative authority over the employer *qua* employer, and thus over the pilots employed on operations which the employer claims are entirely under the regulatory authority and control of foreign governments. In the employer's submission, it is not enough that the employees happen to be employed by an employer that operates a federal work, undertaking or business in Halifax, Nova Scotia.

## **THE UNION**

[11] The union replies that the test for reconsideration has not been met, as the employer has merely attempted to reargue the case that it put before the original panel. In their submission, the Board committed no error of law.

[12] The union submits that the original panel did turn its mind to the "operations" of the employer, and determined that it was an aeronautics operation. The nature of the employer's business does not cease to be aeronautics simply because a portion of its operations take place in another country. They argue that the Board correctly found that the employer is a Canadian company, engaged in aeronautics, which is under the exclusive jurisdiction of Parliament, and therefore the employer is engaged in a federal undertaking to which the *Code* applies.

[13] The union further argues that the employer is attempting to re-argue a finding of fact (that the employer is engaged in the business of chartering helicopters to service the oil and gas industry operating in Canada and around the world and that this is an aeronautics business) under the guise of an error of law, and submits that the employer's position that the foreign domestic nature of the operation outside of Canada removes the *Code's* jurisdiction over the employees is without merit.

## **IV - Relevant Statutory Provisions**

[14] The Board's power to reconsider its decisions derives from Section 18 of the *Code*, which provides:

18. The Board may review, rescind, amend, alter or vary any order or decision made by it, and may rehear any application before making an order in respect of the application.

[15] Pursuant to its regulation making powers, the Board has made a regulation relating to applications for reconsideration:

44. The circumstances under which an application shall be made to the Board exercising its power of reconsideration under section 18 of the Code include the following:

- (a) the existence of facts that were not brought to the attention of the Board, that, had they been known before the Board rendered the decision or order under reconsideration, would likely have caused the Board to arrive at a different conclusion;
- (b) any error of law or policy that casts serious doubt on the interpretation of the Code by the Board;
- (c) a failure of the Board to respect a principle of natural justice; and
- (d) a decision made by a Registrar under section 3.

[16] The application of Part I of the *Code*, and consequently the jurisdiction of the Board, is set out in section 4 of the *Code* as follows:

4. This Part applies in respect of employees who are employed on or in connection with the operation of any federal work, undertaking or business, in respect of the employers of all such employees in their relations with those employees and in respect of trade unions and employers' organizations composed of those employees or employers.

[17] Section 2 of the *Code* defines a federal work, undertaking or business. It reads, in part:

2. In this Act,

"federal work, undertaking or business"

«entreprises fédérales»

"federal work, undertaking or business" means any work, undertaking or business that is within the legislative authority of Parliament, including, without restricting the generality of the foregoing,

- (a) a work, undertaking or business operated or carried on for or in connection with navigation and shipping, whether inland or maritime, including the operation of ships and transportation by ship anywhere in Canada,
- (b) a railway, canal, telegraph or other work or undertaking connecting any province with any other province, or extending beyond the limits of a province,
- (c) a line of ships connecting a province with any other province, or extending beyond the limits of a province,
- (d) a ferry between any province and any other province or between any province and any country other than Canada,

(e) aerodromes, aircraft or a line of air transportation,

...

## V - ANALYSIS

[18] The employer has alleged that the original panel of the Board made an error of law by concluding that the employer itself is a federal work, undertaking or business as defined in section 2 of the *Code*, and when it determined that the Board has jurisdiction under Part I of the *Code* over those persons flying helicopters in what it contends are “domestic operations carried out entirely in foreign countries”. In the employer’s submission, save for the few individuals employed by the employer in Halifax, Nova Scotia, the pilots that the union has applied to represent are employed on or in connection with the operation of works, undertakings or businesses that are entirely and exclusively within the legislative authority of the foreign countries in which they are located.

[19] With respect, the reconsideration panel does not agree with the employer’s characterization of the original panel’s decision.

[20] Firstly, the original panel made a factual finding that the employer’s extra-territorial operations are not, as contended, entirely in foreign jurisdictions. As the evidence demonstrated, the recruiting, hiring, training, discipline and dismissal of the pilots takes place in Canada, as does the overall administration of the employer’s operations.

[21] Secondly, the Board did not conclude that it has jurisdiction to certify the union to represent all of the pilots it has applied to represent. The preliminary decision did not reach a conclusion as to whether the pilots in the proposed bargaining unit do or do not fly helicopters in “domestic operations carried out entirely in foreign countries”. That determination will only be possible once the Board has determined whether CHC Global Operations, or some other foreign entity, is the “true” employer.

[22] Lastly, this reconsideration panel is of the view that the original panel approached the jurisdictional issue in an appropriate fashion. Section 4 of the *Code* provides that Part I applies in

respect of employees who are employed by any ‘federal work, undertaking, or business’. Before determining whether Part I has any application in this matter, the original panel had to satisfy itself that CHC Global Operations constituted a ‘federal work, undertaking or business’, as that term is defined in section 2 of the *Code*. In making that determination, the original panel took into consideration the global nature of CHC Global Operations’ activities. The original panel, after reviewing the relevant jurisdictional facts, chose to treat the employer as a single entity for the purposes of its jurisdictional analysis. The reconsideration panel cannot find fault with this approach, given that the facts before the original panel demonstrated a reasonable degree of integration between the employer’s overseas activities and its Canadian operations.

[23] For the purposes of the jurisdictional issue only, CHC Global Operations admitted that it was the employer of the employees in the proposed bargaining unit, although it reserved the right to raise the issue of the “true employer” should the application proceed beyond the preliminary issue. The evidence showed, and the employer does not contest, that the nature of its business is aeronautics. Accordingly, the original panel of the Board correctly concluded that this Board has authority to entertain the application for certification, as the nature of the employer’s business places it within the legislative authority of Parliament for labour relations purposes.

[24] At paragraphs 72 to 74 of the December 11, 2007 decision, the original panel set out the steps to be followed before the Board can turn its attention to the appropriateness of the proposed bargaining unit and the certification of a bargaining agent to represent that unit. The original panel did not complete all of the steps in the analysis, as key evidence had not yet been heard. As stated at paragraph 104 of the December 11, 2007 decision: “If it is found on evidence to come that the local entities are in fact the true employer of some of the affected pilots, this fact would change or affect the overall analysis. The Board has come to believe that it is essential to hear the parties on this issue of true employer before a final determination can be made on the issue of the Board’s jurisdiction over all of the different pilots concerned.”

[25] The next stage of the inquiry for the Board will be to determine whether the employees in the proposed bargaining unit are in fact employed by CHC Global Operations or some other entity: namely, who is the true employer? If CHC Global Operations is the true employer, the extent to

which the *Code* applies to its extra-territorial operations must then be considered. Paragraphs 76 to 85 of the December 11, 2007 decision set out some of the Board’s jurisprudence with respect to this latter question, and the application of this jurisprudence to the facts of this case is a matter on which the Board will need to hear argument from the parties.

[26] As no error of law has been shown, the application for reconsideration is dismissed.

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Elizabeth MacPherson  
Chairperson

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Douglas Ruck, Q.C.  
Vice-Chairperson

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Judith MacPherson, Q.C.  
Vice-Chairperson