

Federal Court  
of Appeal



Cour d'appel  
fédérale

**Date: 20100329**

**Docket: A-286-09**

**Citation: 2010 FCA 89**

**CORAM: SHARLOW J.A.  
DAWSON J.A.  
TRUDEL J.A.**

**BETWEEN:**

**CHC GLOBAL OPERATIONS (2008) INC.**

**Applicant**

**and**

**GLOBAL HELICOPTER PILOTS ASSOCIATION**

**Respondent**

Heard at Vancouver, British Columbia, on March 9, 2010.

Judgment delivered at Ottawa, Ontario, on March 29, 2010.

**REASONS FOR JUDGMENT BY:**

**DAWSON J.A.**

**CONCURRED IN BY:**

**SHARLOW J.A.  
TRUDEL J.A.**

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**REASONS FOR JUDGMENT**

**DAWSON J.A.**

[1] The applicant is a Canadian business with headquarters in Richmond, British Columbia. It is one of the largest and most geographically diverse helicopter operations in the world, providing chartered helicopter services to the oil and gas industry in Canada and around the world.

[2] In 2006, the respondent applied to the Canada Industrial Relations Board (Board) for certification as the bargaining agent for a group of helicopter pilots hired by the applicant. On June

30, 2009, the Board ordered the respondent be certified as the bargaining agent for the group of pilots. The bargaining unit was comprised of:

all pilots employed by CHC Global Operations (2008) Inc., excluding full-time managers, pilots whose primary duty is non-flying base manager, and foreign national pilots employed by CHC partner companies.

### Issues

[3] This is an application for judicial review of that decision. Two issues are raised by the applicant:

- a. What is the standard of review to be applied to the Board's decision?
- b. Did the Board err in its determination that it had jurisdiction to include the pilots who were the subject of that application for certification in the bargaining unit?

### Procedural History

[4] The applicant filed a primary objection to the application for certification alleging the Board lacked jurisdiction to certify the requested bargaining unit. The applicant asserted that only those pilots employed on or in connection with its operation in Halifax, Nova Scotia were persons employed on or in connection with a federal work, undertaking or business as defined in section 2 of the *Canada Labour Code*, R.S.C. 1985, c. L-2 (Code). All other employees were not, in the applicant's view, employed on or in connection with a federal work, undertaking or business. As a result, by operation of section 4 of the Code the Board lacked jurisdiction to include the other employees in the proposed bargaining unit. The definition of federal work, undertaking or business contained in section 2 and section 4 of the Code are set out in the Appendix to these reasons.

[5] A hearing was held by the Board in respect of the applicant's jurisdictional objection. For the purpose of that hearing, it was assumed that the applicant was the employer of all the helicopter pilots sought to be included in the bargaining unit.

[6] In December of 2007, the Board issued its decision on the objection (Preliminary Decision). The Board found that it had the initial jurisdiction to entertain an application for certification that included different categories of pilots who worked out of various operations other than the one in Halifax, Nova Scotia. The Board concluded that a final decision depended upon who was the true employer of some of the affected pilots.

[7] After the applicant unsuccessfully sought reconsideration of that decision, a further hearing was convened which resulted in the Board's decision of June 30, 2009 (Final Decision). This is an application for judicial review of the Final Decision.

#### The Board's Decisions

[8] The Board held the Final Decision was to be read with its Preliminary Decision. It directed that, as the parties had agreed, the findings of fact made in the Preliminary Decision were not to be disturbed or revisited.

[9] In the Preliminary Decision, the Board characterized the applicant's objection to raise an issue of jurisdiction which the Board stated to be "are the Global Operations pilots, who are subject

of the application for certification, employed on or in connection with the operation of a federal work, business or undertaking?

[10] The Board viewed the first step to be to decide whether the employer was a federal work or undertaking. It found that:

72. [...] It is Global Operations, the Canadian business operating out of Richmond, British Columbia that constitutes the federal business or undertaking that carries on a business of chartering helicopters to service the oil and gas industry operating in Canada and around the world. It recruits, hires and trains the pilots as well as sets up and maintains the infrastructure to conduct its operations from different bases all over the world. Global Operations is the federal aeronautics business or undertaking that falls within the jurisdiction of section 4 of the *Code*.

[11] The next step for the Board was to consider the relation of the various employees to the federal undertaking. There was no dispute about the employees who worked at the applicant's base in Halifax. With respect to the contentious issue of the pilots who did not fly within Canada, the question for the Board was whether they could be characterized as employees employed on or in connection with the operation of a federal undertaking. The Board stated:

[...] the focus here is to examine Global Operations, as the Canadian federal business – the extent to which it has extended its own business and operations extra-territorially when it established its international bases and the local entities with which it operates – and determine whether the pilots who work in these extra-territorial operations can be said to be employed on or in connection with the operation of that federal business.

[12] Before reviewing the relevant evidence, the Board reviewed its and this Court's prior jurisprudence. The Board synthesized the jurisprudence in the following terms:

83. From these decisions we may draw out [and] establish the following facts and criteria which have been deemed relevant and persuasive, but which must be weighed and considered on a case-by-case basis, when determining whether federal legislative

competence and the application of the *Code* extend to the extra-territorial operations of a federal work, undertaking or business, and the employees working on or in connection with them:

1. whether there is a federal undertaking carrying on business in Canada;
2. whether the employees who work in the extra territorial operations perform work for or are linked in some way to that federal undertaking;
3. whether employees are hired in Canada;
4. whether employees are Canadian citizens and/or resident in Canada;
5. by whom and how the employees are paid;
6. where the work in question is performed;
7. who owns the equipment utilized in the extra-territorial operations;
8. whether Canadian legislation, regulations or policies are, or can be enforceable in respect of the Canadian overseas operations.

[13] No one factor was said to be determinative. Each case is based upon its own facts.

[14] Then, over the following eight paragraphs of its reasons, the Board succinctly summarized the evidence before it as follows:

87. Global Operations is a Canadian corporation with headquarters in Richmond, British Columbia. The pilots, regardless of their country of origin, are hired in Richmond, British Columbia. This is the situs of their employment contract. All the pilots receive their initial orientation at Global Operations in Richmond, British Columbia. Global Operations provides for standardized training of all pilots by its own instructors, which is arranged and co-ordinated by Global Operations in Richmond. Chief Pilot Lepore is located in Richmond, British Columbia, and is responsible for establishing the common standards of competence for all pilots.

88. Relying on the employer's evidence, less than 50% of the pilots employed are Canadian citizens and less than 50% reside in Canada. Some continue to reside in their country of origin, while others have taken up residence in the country from which they work. Some pilots may only see Canada during the time of their orientation and training and may never return to Canada in the future.

89. Global Operations manages the evaluation and renewal of pilots' licenses. Global Operations has developed a program of license conversion in which pilots may have their

primary license converted to a Canadian license, thereby simplifying the licensing of pilots employed by Global Operations in different parts of the world.

90. All pilots perform the same work, both within and outside Canada. The employee handbook prepared by Global Operations, which applies to all pilots regardless of their location in the world, sets out the common terms and conditions of employment. Global Operations states that as a matter of best practices it applies the Canadian regulatory framework which reflects certain minimum standards set by Canadian legislation to all pilots regardless of where they are assigned. All these pilots work under these terms and conditions.

91. Global Operations coordinates all visas and work permits from Richmond, British Columbia, although the local entity will assist with the process.

92. With the exception of those at the Halifax base, the pilots perform their work outside of Canada in the foreign locations. Most fly aircraft registered in that foreign location under air operators certificates issued by the respective foreign jurisdictions. They report to and are supervised by a Base Manager located in the foreign jurisdiction.

93. Global Operations is responsible for the assignment and re-assignment of all pilots. If a pilot refuses an assignment he/she can be considered as dismissed from employment. Global Operations in Richmond is responsible for all discipline and dismissal of pilots that it has retained on its payroll. It has also applied to HRDC (Human Resources Development Canada) [now HRSDC] and received permission to average the wages of all its pilots. Global Operations is reimbursed for the payment of wages it makes on behalf of the pilots.

94. Finally, Global Operations provides administrative and technical support to local entities and to pilots. This takes the form of such things as Flight Operations and Maintenance manuals, which are essential to not only the work of the pilots but also to the ability of any of its partner airlines to obtain an [Air Operator Certificate] – a license is required to operate a commercial airline in all countries.

[15] The Board concluded that if, as had been assumed before it, the applicant was the true employer of all the pilots in question, many, if not all, of the pilots could be considered to have sufficient connection to the employer as a federal undertaking. The hearing was adjourned to reconvene later to consider whether the applicant, a federal undertaking, was the true employer of the pilots in question.

[16] In its Final Decision, the Board stated the principal issue to be determined at that time was whether the applicant "which has already been found to be a federal undertaking, is the true employer of the pilots affected by the certification application." After reviewing the applicable jurisprudence on the issue of true employer, the Board reiterated a number of the findings of fact made in its Preliminary Decision. The Board went on to find:

103. Global Operations is the largest helicopter company in the world. It has an acknowledged experience and expertise in providing chartered helicopter services. It operates its own base in Halifax; it operates under its own [Air Operator Certificate] in Brunei, Azerbaijan, Georgia and Vietnam. The corporate relationship between Global Operations and the other local entities varies. Some are owned in full and others in part, except Euro-Asia in Kazakhstan, which is independent. However, Global Operations has an agreement with Euro-Asia whereby its pilots, in servicing the contract with the oil company, operate pursuant to the [Canadian Operations Manual].

[17] After reviewing in detail the evidence relevant to the control of the day-to-day operations of the pilots, the Board concluded:

121. Notwithstanding the corporate structure and the varying degrees of relationship between Global Operations and the local entities in question, the evidence was conclusive that Global Operations controls access to employment of the pilots in question, establishes the working conditions of those pilots, controls the performance of work, and is perceived as the true employer of the pilots who are the subject of this application. Global Operations hires and assigns the pilots to the various bases around the world. It sets out the terms and conditions of employment and establishes the standards necessary to assign a pilot to a base. Global Operations has ultimate control over the selection of pilots and the determination of whether a pilot will be terminated or disciplined. The pilots maintain the same terms and conditions of employment when they are assigned from one base to another and their years of service are recognized by Global Operations. When not assigned to a particular base, a pilot remains part of Global Operations and continues to receive a salary from Global Operations.

122. When all the factors set out in *Nolisair, supra*, are considered, the evidence overwhelmingly points to the fact that Global Operations exercises fundamental control over the working conditions of the pilots who are the subject of this application. A finding in this



respect is not only consistent with the facts, it is also conducive to sound labour relations and consistent with the objectives of the *Code* to promote access to collective bargaining.

### Alleged Errors

[18] As noted above, the applicant alleges the Board exceeded its jurisdiction. It argues, correctly, that section 4 of the Code limits the application of Part 1 of the Code to employees employed on or in connection with the operation of any federal work, undertaking or business. The applicant further argues, again correctly, that the question whether a work, undertaking or business is a federal one depends upon the nature of the operation. The corporate structure of the employer is not determinative. What is relevant is what operation the undertaking or business actually performs. From this, the applicant argues the Board erred by stating, at paragraph 72 of its Preliminary Decision, that "the first step is to identify whether or not the employer in this case is a federal work or undertaking."

[19] The applicant also argues the Parliament of Canada has no legislative or regulatory authority over aircraft flying domestically in a foreign country or over the operations of the foreign entities that work in partnership with the applicant.

### Standard of Review

[20] The applicant argues the standard of review to be applied is correctness. This is said to be because the Board was required to be correct when assessing whether the employees in question met the jurisdictional requirement of section 4 of the Code.

[21] The respondent argues the standard of review to be applied is reasonableness.

[22] It is settled law that the applicable standard of review in cases of constitutional interpretation is correctness. However, the Board's decision was predicated upon its findings of fact about the nature of the applicant's operation and the relationship between that operation and the pilots.

Where, as in this case, the constitutional analysis can be separated from the underlying findings of fact, this Court should show deference to the Board's factual findings. See: *Consolidated Fastfrate Inc. v. Western Canada Council of Teamsters*, [2009] 3 S.C.R. 407.

#### Application of the Standard of Review

[23] Turning to the asserted error, I agree the Board could have been more careful with its language at paragraph 72 of the Preliminary Decision. Despite such language, at paragraph 68 of its decision, the Board had correctly expressed the question to be whether the subject pilots were "employed on or in connection with the operation of a federal work, business or undertaking." Having previously correctly stated the issue, I am satisfied that the less precise language found at paragraph 72 did not constitute a misdirection of law on the part of the Board.

[24] Moreover, it is important not to parse the Board's language too finely. Paragraph 72 in its entirety reads as follows:

72. The Board agrees that the first step is to identify whether or not the employer in this case is a federal work or undertaking. In our view, the starting point is to look at Global Operations itself. It is clear from the summary of the evidence outlined above that there is much more to Global Operations itself, as a business or undertaking, than just its base operating out of Nova Scotia. It is Global Operations, the Canadian business operating out of Richmond, British Columbia that constitutes the federal business or undertaking that

carries on a business of chartering helicopters to service the oil and gas industry operating in Canada and around the world. It recruits, hires and trains the pilots as well as sets up and maintains the infrastructure to conduct its operations from different bases all over the world. Global Operations is the federal aeronautics business or undertaking that falls within the jurisdiction of section 4 of the *Code*.

[25] Read fairly, in my view the Board did direct itself to the nature of the applicant's operation.

The summary of the evidence referenced in paragraph 72 began with an introductory paragraph stating that what followed "is an overview of the employer's operations at both its headquarters and at some of its overseas operations as it relates to its helicopter pilots in particular." The summarized evidence related to the resources and operations of the applicant, its role in setting flight standards and licensing pilots, its relationship with partner aviation services, and its participation in the training and assignment of the pilots. All of this evidence was relevant to the nature of the applicant's operation and the relationship between that operation and the pilots.

[26] In view of the Board's initial correct articulation of the relevant test and the content of its analysis, I find that the Board did not err as the applicant asserts.

[27] The conclusion that the Board properly directed itself to the nature of the applicant's operation is supported by the comments made by the Board when it rejected the applicant's request for reconsideration of the Preliminary Decision. The application for reconsideration was based upon the assertion that the Board had previously erred by considering the nature of the employer and not the nature of its operations. The Board rejected this argument on the following basis:

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.

[...]

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. [Emphasis added.]

[28] The conclusion the Board did not err is further supported by the Board's analysis in its Final Decision about who exercised fundamental control over the pilots (particularly the Board's analysis at paragraphs 104 to 122 of its reasons). The Board found the applicant controlled the pilots' access to employment, their assignments, their training requirements, the terms of their employment, their working conditions and performance, and their discipline and termination. The exercise of such day-to-day control further demonstrated the nature of the applicant's operation. The Board's unchallenged findings on this point support its original functional analysis and conclusion that the

applicant's business operating out of Richmond, British Columbia constituted a federal business or undertaking that carried on the business of chartering helicopters to service the oil and gas industry in Canada and around the world.

[29] As to the fact that some pilots fly domestically in foreign countries, the operation of the Code is not restricted to employees performing work within Canada. Persons working outside Canada's territorial jurisdiction can be included in a bargaining unit certified by the Board, so long as they are employed on a work, undertaking or business that falls within the legislative authority of Parliament. See, for example, *Seafarers' International Union of Canada v. Crosbie Offshore Services Ltd.*, [1982] 2 F.C. 855 (C.A.); leave to appeal dismissed, [1982] S.C.C.A. No. 294. Inherent in that conclusion is that employees working abroad may well be subject to the regulatory authority of another country. As the respondent argues, this does not affect the employees' relationship with their employer, or limit the applicability of the Code to the terms and conditions of the employees' employment.

[30] In sum, the Board correctly recognized that, as a matter of law, it was required to analyse the applicant's operation on a functional basis to determine whether its operation, including its extra-territorial operation, constituted a federal work, undertaking or business. The Board then made factual determinations about the nature of the applicant's operation and the relationship between the pilots and that operation. The Board's factual findings have not been challenged directly and were reasonable. The applicant has failed to establish any reviewable error.

Conclusion

[31] For these reasons, I would dismiss the application for judicial review with costs payable by the applicant to the respondent.

“Eleanor R. Dawson  
\_\_\_\_\_  
J.A.”

“I agree  
K. Sharlow J.A.”

“I agree  
Johanne Trudel J.A.”

## APPENDIX

Sections 2 and 4 of the *Canada Labour code* are as follows:

2. In this Act,

“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,

(f) a radio broadcasting station,

(g) a bank or an authorized foreign bank within the meaning of section 2 of the *Bank Act*,

2. Les définitions qui suivent s’appliquent à la présente loi.

« entreprises fédérales » Les installations, ouvrages, entreprises ou secteurs d’activité qui relèvent de la compétence législative du Parlement, notamment :

a) ceux qui se rapportent à la navigation et aux transports par eau, entre autres à ce qui touche l’exploitation de navires et le transport par navire partout au Canada;

b) les installations ou ouvrages, entre autres, chemins de fer, canaux ou liaisons télégraphiques, reliant une province à une ou plusieurs autres, ou débordant les limites d’une province, et les entreprises correspondantes;

c) les lignes de transport par bateaux à vapeur ou autres navires, reliant une province à une ou plusieurs autres, ou débordant les limites d’une province;

d) les passages par eaux entre deux provinces ou entre une province et un pays étranger;

e) les aéroports, aéronefs ou lignes de transport aérien;

f) les stations de radiodiffusion;

g) les banques et les banques étrangères autorisées, au sens de l’article 2 de la *Loi sur les banques*;

(h) a work or undertaking that, although wholly situated within a province, is before or after its execution declared by Parliament to be for the general advantage of Canada or for the advantage of two or more of the provinces,

(i) a work, undertaking or business outside the exclusive legislative authority of the legislatures of the provinces, and

(j) a work, undertaking or activity in respect of which federal laws within the meaning of section 2 of the *Oceans Act* apply pursuant to section 20 of that Act and any regulations made pursuant to paragraph 26(1)(k) of that Act;

[...]

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.

h) les ouvrages ou entreprises qui, bien qu'entièrement situés dans une province, sont, avant ou après leur réalisation, déclarés par le Parlement être à l'avantage général du Canada ou de plusieurs provinces;

i) les installations, ouvrages, entreprises ou secteurs d'activité ne ressortissant pas au pouvoir législatif exclusif des législatures provinciales;

j) les entreprises auxquelles les lois fédérales, au sens de l'article 2 de la *Loi sur les océans*, s'appliquent en vertu de l'article 20 de cette loi et des règlements d'application de l'alinéa 26(1)k) de la même loi.

[...]

4. La présente partie s'applique aux employés dans le cadre d'une entreprise fédérale et à leurs syndicats, ainsi qu'à leurs employeurs et aux organisations patronales regroupant ceux-ci.



**FEDERAL COURT OF APPEAL**

**NAMES OF COUNSEL AND SOLICITORS OF RECORD**

**DOCKET:** A-286-09

**STYLE OF CAUSE:** CHC GLOBAL OPERATIONS (2008) INC. v.  
GLOBAL HELICOPTER PILOTS  
ASSOCIATION

**PLACE OF HEARING:** Vancouver, British Columbia

**DATE OF HEARING:** March 9, 2010

**REASONS FOR JUDGMENT BY:** DAWSON J.A.

**CONCURRED IN BY:** SHARLOW J.A.  
TRUDEL J.A.

**DATED:** March 29, 2010

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