

No. S026641
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

Between:

ALBERT EDWARD BROWNSMITH
as representative plaintiff

Plaintiff

AND:

AIR CANADA

Defendant

Brought under the *Class Proceedings Act*, R.S.B.C. 1996, c.50

STATEMENT OF CLAIM

1. The plaintiff, Albert Edward Brownsmith, is a Machinist Mechanic, and resides at 6593 Albion Way, City of Delta, in the Province of British Columbia.
2. The defendant, Air Canada, is an airline, and is federally incorporated, with registered offices at 2700 – 700 West Georgia Street, in the City of Vancouver, in the Province of British Columbia.
3. In or about January 2000, the defendant acquired operational control of Canadian Airlines International Ltd. (“Canadian”) and thereby became responsible for its liabilities and obligations.
4. The Plaintiff was employed by Canadian from March 24, 1986 to November 9, 1998 when he transferred to the joint venture company, Motor Turbine Union Maintenance Canada Ltd. (“MTU”).

5. At the time the plaintiff transferred to MTU he was defined as a Category 2 transferee.
6. To induce the plaintiff to transfer to MTU, Canadian Airlines offered the plaintiff a transfer package.
7. The terms of the transfer package were contained in a letter from Canadian dated June 5, 1998.
8. One of the terms of the transfer package granted to the plaintiff a Retiree Travel Card which entitled the plaintiff to lifetime travel privileges (the "Travel Benefit").
9. The Travel Benefit permitted the plaintiff reduced-cost airline travel on Canadian, as well as reduced-cost travel on other airlines, a benefit known in the airline industry as "Interline Travel".
10. The transfer package ensured the lifetime continuation of the Travel Benefit, including Interline Travel.
11. The plaintiff accepted the transfer package in order to obtain the benefits offered, including the Travel Benefit and Interline Travel.
12. The terms of the transfer package as accepted by the plaintiff formed a binding contract between the plaintiff and defendant.
13. Between November 9, 1998 and September 15 of 2000, the plaintiff used and relied on the Travel Benefit, including Interline Travel.
14. On or about September 15, 2000 the defendant sent the plaintiff a letter unilaterally and to a material degree reducing the Travel Benefit by, *inter alia*, taking away Interline Travel.

15. The defendant's unilateral reduction of the Travel Benefit by taking from the plaintiff Interline Travel was a wrongful breach of the defendant's contractual obligations under the transfer package.
16. The defendant's wrongful breach of contract has caused and continues to cause the plaintiff loss and damage.
17. The plaintiff is aware of other former employees of the defendant who accepted a similar transfer package with an identical or substantially similar Travel Benefit, including Interline Travel, the contractual terms of which have been similarly breached by the defendant.
18. The defendant's breach of its contractual obligations in similar transfer packages raises common issues as the issues in the present action.
19. The plaintiff seeks to represent the following class of persons:
 - (a) All former Canadian employees who became employees of MTU who are residents of British Columbia, who accepted a transfer package from Canadian as part of their transfer from Canadian to MTU, who were classified as Factor 60 or Factor 70 employees upon transfer, and who were given the ability to obtain air travel and related services as part of their transfer package.
20. Particulars of the loss and damages suffered by the Plaintiff include:
 - (a) The financial loss of the Travel Benefit, being the difference between the past and future financial value of the Travel Benefit contracted for by the plaintiff as a term of the transfer package, versus the financial value of the Travel Benefit as unilaterally reduced by the defendant.
21. The defendant unilaterally changed the terms of the transfer packages in a high-handed and arrogant manner. The sudden, harsh, and malicious manner of the change and the bad faith unilateral modification of the transfer package warrants the imposition of punitive and exemplary

damages to punish the defendant, and deter the defendant from engaging in similar behaviour. The plaintiff pleads punitive and exemplary damages.

22. The defendant took something away from the plaintiff that the plaintiff had used and relied on for a period of time. Further, the plaintiff accepted a lower salary throughout his career, and accepted a transfer package with the knowledge that he would be free to travel the world both for pleasure and to visit friends and loved ones. The defendant's removal of the plaintiff's ability to realize his dream has caused the plaintiff damages above and beyond what can be compensated for by ordinary damages. The plaintiff pleads aggravated damages.

20. The Plaintiff claims, on his own behalf, and on behalf of the Class:

- (a) an order certifying the proceeding as a class proceeding;
- (b) past and future special damages;
- (c) specific performance;
- (d) punitive and exemplary damages;
- (e) aggravated damages;
- (f) damages;
- (g) costs pursuant to s.37(2) of the *Class Proceedings Act*, RSBC 1996, c. 50;
- (h) interest pursuant to the *Court Order Interest Act*, RSCB 1996, c. 79; and
- (i) such further and other relief this Honorable Court may find just.

PLACE OF TRIAL: Vancouver, British Columbia.

Dated at Vancouver, British Columbia, this 5th day of March, 2003.

Solicitor for the Plaintiff

This statement of claim is filed and served by David A. Klein of the firm of Klein, Lyons, Barristers and Solicitors, whose place of business and address for service and delivery is at 1100 – 1333 West Broadway, Vancouver, B.C. V6H 4C1.

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