

*Case Name:*

**G.A.I. General Aviation Inc. v. Greaves**

**IN THE MATTER OF a Wage Recovery Appeal under Division  
XVI - Part III of the Canada Labour Code**

**Between**

**G.A.I. General Aviation Inc. (Winnipeg, Manitoba),**

**appellant (employer), and**

**James Greaves, respondent (employee)**

**Human Resources Development File No. YM2727-1867**

[2003] C.L.A.D. No. 575

Canada

Labour Arbitration

**B.P. Schwartz, Referee**

Heard: September 25, 2003.

Decision: November 19, 2003.

(23 paras.)

**Appearances:**

Michael Gillespie, President, for the appellant.

James Greaves, the respondent.

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**AWARD**

**1** The employer in this case is G.A.I. General Aviation Inc. ("General Aviation") (formerly known as G.A.I. Aviation Inc. formerly operating as "Flying Colors Pilot Training"). The employee is Mr. James Greaves ("Mr. Greaves"). Mr. Greaves was first employed as Program Director, then as the Chief Flying Instructor. When Mr. Greaves left the company, he claimed that the employer owed him unpaid wages.

**2** This matter came on before me on September 25th, 2003. The President of the Employer, Mr. Gillespie, appeared before me at my office and the Employee, Mr. Greaves, presented his testimony

via telephone conference as he now resides in Ontario. Both parties represented themselves at the hearing, and did not submit any case law or detailed legal argument.

**3** General Aviation took the view from the outset of the dispute that:

- (1) Mr. Greaves had never earned the contested amount;
- (2) The arrangement with Mr. Greaves was that he would be paid \$35,000/year and an additional \$21/hour for time spent instructing paying students. The latter amount might be called the "flight pay";
- (3) Mr. Greaves had requested, when he was promoted to Chief Flying Instructor, that he would receive a regular monthly advance based on the expectation that he would perform 500 billable hours of flight instruction per year. In this way, Mr. Greaves would have a steady cash flow. At some point, in the employer's view, it was expected that if Mr. Greaves' cumulative flight hours fell short of the annual target then the employer would stop paying the advance until Greaves was caught up.

**4** Mr. Greaves theory of the relationship, which he explained at the hearing, was that:

- (1) He reached an oral agreement during a conversation with Mr. Gillespie, his Manager, before he was promoted to Chief Flight Instructor. Mr. Greaves offered to continue doing his regular job and take on all the additional duties of a Chief Flight Instructor for an additional \$10,000 per year;
- (2) He never made an oral or written agreement to the contrary.

**5** Mr. Greaves filed a complaint with Human Resources Development Canada. Inspector Cathy McGimpsey's written report establishes that she consulted extensively with both parties and thoroughly considered the arguments on both sides.

**6** The end result was that she upheld Mr. Greaves' complaint.

**7** Mr. Greaves testified that he had been working as a pilot prior to being promoted to Chief Flying Instructor. The previous Chief Flight Instructor had been paid \$75,000/year. Mr. Greaves testified that in an oral conversation with Mr. Gillespie, Mr. Greaves offered to continue doing his existing tasks as a Program Director plus take on the additional duties of Chief Flying Instructor - all for an annual salary of \$45,000. Mr. Greaves produced an email dated 25 October 2001, confirming this proposal. The email's authenticity is not contested. Mr. Greaves testified that Mr. Gillespie orally agreed to this arrangement.

**8** At the hearing Mr. Gillespie introduced a document that was offered to Mr. Greaves at the time he began employment as Chief Flying Instructor. The document contained the following "500 hour clause":

"Your salary will be a base of \$35,000 plus \$21 per for billable flight time; it is expected that you will fly 500 billable hours per year and that your annual remuneration will be \$45,000."

**9** Mr. Gillespie testified - and this was confirmed by several other witnesses called by General Aviation - that Mr. Greaves refused to sign the document at the time he became Chief Flying Instructor.

**10** Pay slips state that Mr. Gillespie was regularly paid, until the end of his employment, a pro-rated part of his fixed salary of \$35,000 plus a pro-rated part of the 500 hours of annual payments. The pay stubs regularly contained a line "JG Flight Time Adv.", which was regularly calculated - until the time of the dispute - at 19.84 hours x \$21/hour. Mr. Greaves testified that he had not previously noticed the line and observed that the word "advance" was never spelled out in full on any of the pay stubs.

**11** On July 15, 2002, Mr. Greaves signed a document that included the 500 hour clause. Mr. Greaves testified that he did so because he was going away on vacation, needed money, and was threatened that he would not be given his vacation pay unless he signed. He further testified that as far as he was concerned, the document did not change the basic arrangement - that he had an assured salary of \$45,000/year.

**12** When Mr. Greaves' employment ended and the dispute arose, Mr. Greaves filed a complaint under the Canada Labour Code.

**13** Inspector Cathy McGimpsey, the record shows, consulted extensively with Mr. Greaves and Mr. Gillespie. In her view "Mr. Gillespie intended to pay Mr. Greaves 45,000/year as stated in his 1 December 2001 letter of offer and that is why he topped up the flight pay".

**14** The "500 hour" clause can be read several ways. It might be read as favouring General Aviation's position. It could be interpreted as making the full payment of \$45,000 annually contingent on Mr. Greaves actually delivering 500 billable hours of flight instruction.

**15** The letter can also be read instead as favouring Mr. Greave's position. It could be interpreted as committing the employer to the annual payment of \$45,000. The 500/hour clause can be read as presenting a broad explanation of the basis for fixing the annual salary at that amount rather than as a strict requirement that Mr. Greaves actually put in 500 hours of billable flight time or end up the year with less than \$45,000 in remuneration. One could understand putting the rationale for a figure in a document, so that other employees could appreciate why they are being paid less or more or so that the parties will have a point of reference in future negotiations.

**16** There are two points in favour of reading the clause in a manner favourable to Mr. Greaves' position:

- (1) Contractual documents should be construed "contra proferentum" with respect to the employer who drafts and presents them on a "take it or leave it" basis. That is, if two interpretations are equally plausible, a document will be interpreted in a way favourable to the employee, rather than the employer who drafted it and presented it to the employee for acceptance without negotiation. This principle is well-established in the case law in this area as noted in several recent decisions such as *Buckler Transport Ltd. v. Gardner* [2000] C.L.A.D. No. 418 (Professor R. D. Gibson) and *Provider Express Ltd. v. Daniel Dutchak* dated July 3, 2003 (Professor B. D. Schwartz);
- (2) Ms. McGimpsey interpreted the "500 hour" clause that way after consulting with the parties. Her report is thorough and considers the competing positions of the parties. In an "unpaid wages" appeal, an Inspector's decision is to be upheld unless it is proved wrong. This point is also very well

established in the case law established by adjudicators under the unpaid wage provisions of the Canada Labour Code.

**17** Mr. Gillespie, who testified under oath on behalf of General Aviation, was an articulate witness. He provided plausible testimony that he and Mr. Greaves had orally agreed that money would be advanced, rather than the 500 hours worth of flight time constituting a firm guarantee. I do not doubt the sincerity of Mr. Gillespie's version of events. The question is whether his recollections and interpretations are correct, not whether they were honestly held.

**18** Mr. Greaves, however, offered under oath his own and very different understanding of the arrangements. General Aviation attempted to challenge the credibility of Mr. Greaves at the hearing by introducing allegations of inappropriate behaviour on his part in other respects (e.g., use or return of office equipment). These allegations depended on the interpretation of various other understandings and transactions between the parties and General Aviation was not able to prove that any misconduct actually took place.

**19** I did not find any internal logical contradictions or inherent implausibility in the testimony of either of the witnesses. The manner in which each of them testified was calm and not undermined by any discernable tendency to evade, exaggerate or mislead. At the end of the day, setting the testimony of each witness side-by-side and leaving aside the documents and testimony of the other witnesses, I was left with two accounts that are equally credible.

**20** I received brief testimony from several other witnesses from General Aviation, but they were not present during some of the key and contested conversations and do not have any significant impact on the result herein.

**21** The email of October 21 provides some very limited support for Mr. Greaves' position, but is far from conclusive confirmation.

**22** The pay stubs are compatible with the position of both parties. Even if they were viewed as somewhat more favourable to the Employer's position, however, they would not outweigh the two overriding considerations already identified in favour of confirming Ms. McGimpsey's findings. To repeat, the burden of proof is on the Appellant - in this case, General Aviation - to show that the Inspector's ruling was wrong, and the contra proferentum rule weighs in favour of Mr. Greaves' interpretation of some key documents.

**23** Accordingly, after carefully considering all the evidence and exhibits, my ruling must be in favour of Mr. Greaves, and I dismiss the appeal.

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