

# Court orders Air Canada to enrol dismissed worker in retiree benefits plan

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**Long-time worker would have qualified for benefit during notice period; estimated payout value was \$1.8 million**



However, for every rule there is an exception. In a departure from legal precedent, an Ontario court recently ordered an employer to enroll an employee in a retiree benefit program, rather than order the employer to pay a seven-figure lump sum.

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Roland Ruel was an Air Canada employee. Due to workforce reductions necessitated by the pandemic, Ruel's employment was terminated in the summer of 2020, after 24.5 years' service. Dissatisfied with the severance package Air Canada offered, Ruel commenced legal proceedings in the Ontario Superior Court of Justice.

Before a judge on a motion for summary judgment, Ruel was successful. He was awarded 24 months' pay in lieu of notice, including compensation for base salary and bonus as well as the loss of health insurance benefits, pension, and stock.

**Read more:** Statutory notice period obligations include the [continuation of whatever benefits](#) the employee was otherwise entitled to, writes an employment lawyer.

However, one item in Ruel's claim was outside the norm. It was a retiree benefit which provided him with travel privileges for the balance of his lifetime on attaining 25 years' service. At the time of his termination of employment, Ruel was six months short of 25 years' service, but he would have achieved the required length of service early into his 24-month notice period, had he been provided with working notice.

Air Canada defended the travel benefit claim, arguing that it was a "privilege" or "perk" and not an entitlement, and it should not form part of Ruel's severance compensation. The court rejected this argument on the basis that Ruel would have received the travel benefit had he attained 25 years' actual service and the benefit was not discretionary.

## Appropriate legal remedy

Ruel claimed the monetary value of the travel benefit over the balance of his expected lifetime. He provided expert evidence that the value was \$1.8 million – an amount greater than the rest of his entire claim. In the alternative, Ruel claimed “specific performance.”

Specific performance is a legal term which means the court orders performance of a specific contractual obligation (other than payment of a debt). In most cases, monetary damages are an adequate legal remedy and therefore courts rarely order specific performance. In addition, courts are concerned about the possibility of having ongoing supervisory obligations if specific performance is ordered.

**Read more:** The right to [remove bonus plans from reasonable notice periods](#) must be clear, unambiguous, and brought to the attention of the employee, according to an Ontario Court of Appeal decision.

In Ruel’s case, the judge made an exception to the rule. The judge noted a provision in the travel benefit document that allowed Air Canada to modify or cancel it. If such modification or cancellation should occur, there was a possibility the assumptions made by Ruel’s expert to determine the value of the travel benefit could become inaccurate.

Rather than speculate on an uncertain monetary value, the court decided that the goal of placing Ruel in the same position as other retirees was best achieved by ordering Air Canada to enrol Ruel in the retiree travel benefit.

## Takeaways for employers

This decision has implications with respect to other benefits. Similar to the travel benefit, valuation of lost pension and retiree health benefits involve uncertain predictions. When these types of claims are compensated through a cash payment they are usually calculated using variables of life expectancy, frequency of use and future interest rates, and then sometimes adjusted upwards due to income tax considerations, known as “gross-up.”

The consequence of this approach is that it could likely generate a monetary award that ends up being either too high or too low when compared with what later happens in an individual’s life. Interestingly, those claims were compensated by a monetary award in the *Ruel* case, without further explanation from the judge.

If the goal is to put an employee in the position he would have been had he been given working notice, this decision may open the door for a future court to consider specific performance as compensation for certain types of benefits. Depending on the nature of the benefit at issue, this could be a win-win for all parties concerned.

See *Ruel v. Air Canada*, 2022 ONSC 1779.

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