



Agreement and the intent obtaining it.

**THE PARTIES:**

2. That the Plaintiff is, as stated above, an association of persons registered under the Societies Registration Act of 1860<sup>1</sup>. It acts as the collective bargaining agent of all persons comprising the Defendant's Cockpit Crew. In its capacity as the representative body, the Plaintiff has negotiated and concluded various contracts with the Defendant for the benefit of its membership. These contracts (read Working Agreements) have acted to secure and sustain service benefits for all persons enjoined as Cockpit Crew. There is no dispute with regard the Plaintiff's status. The cause compelling present proceedings confirms such contention. It is clarified that by way of present proceedings, the Plaintiff yet again acts in a representative capacity.

3. That the Defendant is the employer of all persons comprising the Plaintiff's membership. Formerly a statutory body<sup>2</sup>, the Defendant has now been reorganized into a public limited company<sup>3</sup>. It is contended that the Defendant has, since its inception, enjoyed the privilege of operating as Pakistan's premier flag carrier. Earlier regulated by the Federal Government, the Defendant now (allegedly) operates as an autonomous body apparently devoid of intervention from the Federal Government. Statement lastly made is qualified since the autonomy purportedly vesting in the Defendant is illusory. Government intervention in corporate matters continues to act as a deterrent to economic growth and maturity.

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1. Certificate of Registration is filed herewith as Annexure 'P1'  
2. Pakistan International Airlines Corporation Act of 1956 ("The Act of 1956") - Annexure 'P2'  
3. Pakistan International Airlines Corporation (Conversion) Act of 2016 ("The Act of 2016") - Annexure 'P3'

4. That employees representing the Defendant are divided into the following classes; staff (covering all employees in between Pay Groups I to V) and officers (covering all employees from Pay Group VI and above)<sup>4</sup>. The Plaintiff's membership, although qualifiable as officers, is a distinct group / cadre. They are neither covered through standard regulations<sup>5</sup> nor governed through Administrative Orders<sup>6</sup>.

5. That members of the Defendant's Cockpit Crew (read Pilots, including First Officers) are the 'life's blood' of its commercial activities. Such persons are the most important component within the Defendant's operational machinery. It is, therefore, that the Defendant has repeatedly identified (and protected) the rights and interests of its Cockpit Crew by drawing out agreements exclusively specifying the same. These agreements contain terms and conditions of service applicable to Pilots (including First Officers). As stated above, the Plaintiff's membership, therefore, continues to remain excluded from the application of general rules and regulations governing the Defendant's employees.

6. That it has long been recognized that the Defendant's 'staff' is protected in service through operation of labor / industrial law statutes. They are, on account of legal classification as 'workers'<sup>7</sup>, represented by a Collective Bargaining Agent registered under the provisions of the relevant statute<sup>8</sup>. Since no statute exists or has existed for the benefit of the Plaintiff's membership, contractual accords have been arranged and implemented to secure provisions thereof.

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4. Chapter 9 of the Personnel Policies Manual – Annexure 'P4'  
5. Pakistan International Airlines Corporation Employees' (S&D) Regulation of 1985  
6. Chapter 16 of the Personnel Policies Manual  
7. Section 2(xxxii) of the Industrial Relations Act of 2012  
8. Section 13 of the Industrial Relations Act of 2012

7. That in this regard, the Plaintiff draws attention to the repeated execution of Working Agreements for the benefit of following terms; 1978; 1989-1991; 1995-1998; 2009-2011; and 2011-2013<sup>9</sup>. The Working Agreement (as lastly executed) has been under consideration for a renewal. Notwithstanding determination of the term, the Working Agreement continues to apply between and bind parties thereto. The parties have, till occurrence of the cause compelling present proceedings, maintained said *status quo*. Such is intent of Clause 1.6 of the Working Agreement.

8. That all Working Agreements have been executed in pursuit of a similar / standard framework. They have provided for and secured (i) financial emoluments and benefits; (ii) flying duties and related allowances; (iii) safety precautions and compliances; (iv) professional progression and related trainings; (iv) disciplinary processes; etc. Another striking similarity between all Working Agreements is that they do not contain termination clauses. The parties hereto have contractually volunteered surrender of their right to terminate Working Agreements in any manner, least of all without specifying reasons.

9. That statement lastly made summons a concession. It is contended that by identifying lack of a termination clause, the Plaintiff does not intend to suggest that the Working Agreement cannot be concluded at the volition of either party. The Plaintiff recognizes its own as also the Defendant's right to enforce an implied power of termination. However, the Plaintiff contends that in exercise of an implied right, either party must specify a breach compelling termination. There can be no exception to such condition.

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9. Photocopies filed as Annexures 'P5' to 'P9', respectively

10. That in specifying a breach, the party causing the termination must demonstrate that it (the breach) concerns the Working Agreement in the capacity a fundamental consideration / incidence provided therein. The action impugned herein does not qualify such standards. It is unlawful and illegal.

11. That there is another condition encumbering an intended act of termination. In this regard, the Plaintiff refers to Clauses 1.7 and 1.8 of the Working Agreement. By way of the former, the Plaintiff has been enabled / empowered to identify a concern to the Defendant for purposes of seeking its correction within Thirty (30) Days thereof. Under the latter, either party can invoke arbitration and determination of any dispute(s) occurring in the interpretation of the Working Agreement.

12. That submissions thus far (and specially lastly) made are designed to contend that either party to the Working Agreement; particularly the Defendant; cannot act to terminate it. If such an eventuality is desired, the intention to do so must be coupled with reasons delivered upon / intimated to the affected party. Any action(s) taken in contravention of such protocol is voided on account of its (legal and contractual) impropriety.

13. That with foregoing contentions recorded, the Plaintiff draws attention to Letter dated 30.04.2020<sup>10</sup>. By way of the Impugned Letter, the Defendant has unilaterally; without meeting conditions as specified through the Working Agreement and as independently detailed above; caused termination thereof. To compound the Plaintiff's concern, the Defendant has

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10. The Impugned Letter, filed herewith as Annexure 'P10'

attempted to identify a reason which sponsors the Impugned Letter. The reason cited suggests that the Defendant desires *to bring the company out of strangleholds that various groups have had over its affairs*. The reason neither resonates in the scheme of the Working Agreement and / or applicable law(s).

14. That the Impugned Letter is illegal, unlawful, contrary to the terms of the Working Agreement and (more importantly) *ultra vires* the Constitution of the Islamic Republic of Pakistan, 1973<sup>11</sup>. The Impugned Letter does not qualify the test of contractual propriety.

15. That in order to streamline its challenge, the Plaintiff hereby identifies following grounds of challenge. The Plaintiff reserves its right to urge further grounds.

**LACK OF CONTRACTUAL AUTHORITY:**

16. That as stated above, the Working Agreement is devoid of a termination clause. It is reiterated that the Defendant, if so inclined, would be compelled to identify a breach of the terms thereof by the Plaintiff. In case of a breach, the Defendant is under an obligation to necessarily notify the Plaintiff who would, in turn, either attempt a redress thereof and / or consider the same a dispute for purposes of resolution by way of arbitration. Termination, in any event, is impermissible in the manner in which it has been enforced through the Impugned Letter.

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11. The Constitution

17. That the Plaintiff claims a lack of notice, a just cause and a hearing. As stated above, the Working Agreement comprises terms and conditions of service for all persons deemed members of the Defendant's Cockpit Crew. Once extended, service benefits cannot be altered, rescinded and / or revoked unilaterally. The Impugned Letter acts to novate terms of contract without ensuring a consultative process with the beneficiaries and / or their representative (the Plaintiff). The Defendant is not legally equipped with a right to withdraw grants made in favor of the Plaintiff's membership.

**STATUTORY DISQUALIFICATION:**

18. That as stated above, the Defendant has been reorganized into a public limited company. All acts and deeds performed by the Defendant in the capacity of a statutory body; including contracts such as the Working Agreement; are protected by operation of Section 3 of the Act of 2016. It is contended that Section 3 *supra* continues to hold field. The Defendant (including its Board of Directors) are, therefore, disqualified to enter upon matters occurring in and secured under the Act of 2016. The Defendant is devoid of power / authority to indirectly alter statutory intent. The Working Agreement is immune.

**CONSTITUTIONAL DISQUALIFICATION:**

19. That in addition to terminating the Working Agreement, the Impugned Letter declassifies the Plaintiff as collective bargaining agent / representative body for Pilots (including First Officers). This act in and of itself is an infringement of rights conferred upon the Plaintiff and its

membership under Article 17 of the Constitution. As is understood, 'officers' furthering the commercial interests of the Defendant are represented by distinct associations. Since 'officers' (including the Plaintiff's membership) are not represented and / or secured through statute (as in the case of 'staff'), a need was felt to organize themselves into associations designed to mirror purposes similar to those enabling registered Trade Unions.

20. That upon their incorporation, all associations have been duly recognized, engaged and counseled by the Defendant. Such continued acceptance of representative bodies on behalf of its employees is accession to their (individual and collective) rights to seek franchise under Article 17 *supra*. The Plaintiff contends that the right of association can only be qualified by ***reasonable restrictions imposed by law in the interest of Pakistan's sovereignty, public order and morality***. None of these conditions exist to aid justifying the Impugned Letter.

21. That under the circumstances, the Plaintiff is compelled to place itself at the feet of this Hon'ble Court seeking necessary indulgences. In present times, and assuming that the Impugned Letter is proper, the Plaintiff's membership remains without any substantive rights in service. A vacuum has now arisen. After regularization into service, all Pilots are governed by the Working Agreement. Their initial contracts of service merge therein. At present, all service benefits stand revoked. Hence, this Suit!