

The Air Canada Flight Attendant Strike/Lockout, Explained



Most Canadians – especially those travelling at this time – are aware of the current Air Canada flight attendant strike/lockout.

Over the weekend, the workers elected to continue striking despite a federal ministerial order to return to work and submit to binding arbitration. How did this come about, and can the flight attendants continue to defy the order? What happens if they don't return to work? This post will aim to answer some of those hot-topic questions.

How did we get here?

Unionized workers don't have individual employment contracts – they bargain collectively for one group contract called a collective agreement. Collective agreements can last a number of years before they come up for renewal and re-negotiation. Air Canada's flight attendants are represented by a component of a union called CUPE, and their most recent collective agreement lasted for ten years. Once that agreement expired on March 31, 2025, CUPE and Air Canada had to negotiate the next version.

CUPE and Air Canada engaged in bargaining talks starting months prior to the expiry date. However, they were still in disagreement – what is typically termed an “impasse” – on several key items as of March 31. These items included 1) a wage increase and 2) the concept of “ground pay” for flight attendants.

The impasse on the wage increase essentially means that Air Canada did not agree to the increase that CUPE was asking for. This type of impasse is relatively common in bargaining, as wages are one of the most important – and most debated – items when any union and employer are seeking to renegotiate the collective agreement.

The “ground pay” issue is unique, however, to the airline industry. Flight attendants do not get paid (or, in some cases, receive only partial pay) for the work that they do while the aircraft is not in motion. This work includes required safety checks, passenger boarding and de-boarding, and other preliminary and after-work required to make a flight run smoothly. While this has been a feature of the flight attendant industry for many years, it has recently attracted increased attention and advocacy – and has attracted sympathy from [a majority of Canadians](#).

Due to impasse on these two issues, CUPE gave strike notice to Air Canada at 12:58am on August 16, 2025. Less than an hour later, at 1:30am, Air Canada gave a lockout notice to CUPE. There are [various rules and timelines](#) that govern when the parties to a labour dispute can stop work in this manner (i.e., the union by striking, and the employer by locking out its workers). The initial strike and lockout notices were given in accordance with these timelines.

Over the next 24 hours, however, the landscape changed entirely.

The Ministerial Order and Section 107 of the Canada Labour Code

News coverage over the weekend – Sunday in particular – was occupied with the latest development: [Federal Jobs Minister Patty Hajdu's order](#) that CUPE and Air Canada cease the strike and lockout and take their dispute to binding interest arbitration.

Minister Hajdu made this order under s. 107 of the *Canada Labour Code*, a seldom-used power that allows the Minister to “do such things as to the Minister seem likely to maintain or secure industrial peace and to promote conditions favourable to the settlement of industrial disputes or differences”, as well as to “direct the Board to do such things as the Minister deems necessary [to those ends]”. The order would force the parties to take their disputes to an interest arbitrator, who would hear both sides’ proposals and then impose a new collective agreement whether or not the parties (and workers) consent to the final terms. Interest arbitration is typically preferred by employers, as arbitrators tend to rely on past cases and comparators in the industry to make their decisions regarding wage increases and other items. However, in cases where a union is seeking a new advance for its workers – such as pay for ground work, in this case – the precedent-based approach of interest arbitration may not be capable of achieving this kind of progress.

Until recently, Section 107 was seldom if ever invoked to stop a strike or lockout. However, in the past year alone, the federal government has invoked it multiple times: to end the rail workers’ lockout in August 2024, to stop the BC and Quebec port workers’ strikes in November 2024, and now to attempt to end the CUPE-Air Canada flight attendant strike/lockout. Its use of this power has already been challenged in court by the union representing Quebec port workers (another component of CUPE). The port workers’ union filed [an application for judicial review](#) of then-Minister MacKinnon’s invocation of the power, asking the Federal Court to find that it violated s. 2(d) of the *Canadian Charter of Rights and Freedoms* – the right to freedom of association. In doing so, the port workers’ union relied on [a 2015 decision of the Supreme Court of Canada](#), which held that the right to strike was included in s. 2(d)’s constitutional protection.

The port workers’ challenge to this type of exercise of s. 107 – a challenge which will ask the Federal Court to review the constitutionality of a Ministerial order forcing binding arbitration to end a strike – is still to be heard on its merits. However, it provides a backdrop to the current dispute between Air Canada and CUPE. This is because – as of Sunday, August 17, 2025 – the flight attendants elected to remain on strike in defiance of Minister Hajdu’s s. 107 order.

Can the Flight Attendants Remain on Strike?

The answer is: it depends.

Technically, by remaining on strike, the flight attendants would be in violation of a s. 107 Ministerial order. However, as CUPE has already made clear via the port workers’ application for judicial review, such an order may in and of itself be illegal if it violates s. 2(d) of the *Charter* and if it cannot be saved by the exception set out in s. 1 of the *Charter*. The *Charter* is part of Canada’s

Constitution and, as a result, is the highest law of the land. Any governmental act, statute, or regulation that violates the *Charter* would be invalid and therefore illegal in and of itself.

Typically, such an act, statute, or regulation would remain in place until or unless a court deemed it invalid for violation of the Constitution. By remaining on strike, the flight attendants have signalled that they intend to exercise their Constitutionally-protected right now itself, rather than wait for a court determination on the issue. The government could take a number of actions in response, including seeking enforcement of its order via the courts; but any such action would probably be met with a responding legal challenge from CUPE, invoking the protection of s. 2(d).

The content of this article is intended to provide a general guide to the subject matter. Specialist advice should be sought about your specific circumstances.

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