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24 September 2019

QANTAS GROUP SUBMISSIONS

AM2014/253 - AIRCRAFT CABIN CREW AWARD 2010

1. These submissions are made on behalf of the Qantas Group in response to the submissions filed by the Flight Attendants' Association of Australia dated 18 April 2019, regarding the exposure draft *Aircraft Cabin Crew Award 2010* published by the Fair Work Commission on 15 March 2019 (**Exposure Draft Award**).

Calendar year definition

2. The FAAA proposes that a definition of "year" be inserted as follows:

"Year" means the twelve month period beginning from the employee's commencement or anniversary of the employee's employment.
3. We do not agree this definition should be included in the Exposure Draft Award. The term "year" is used in a number of clauses throughout the Exposure Draft Award, including with respect to the accrual of leave entitlements, ordinary hours of work for employees and rates of pay for employees of a certain age.
4. We support the deletion of the term "calendar year" from the Exposure Draft Award (given it is not used anywhere), and otherwise cannot see any reason why the term needs to be defined. Moreover, the definition proposed by the FAAA does not suit the context within which the various terms are used, and may also be inconsistent with the National Employment Standards.

Regional flying - Overtime

5. The FAAA proposes that Schedule B, Regional flying, be varied to include provision for overtime, in the following terms:

B.3A Overtime

B.3A.1 Overtime for regional flying will be paid as follows:

 - (a) For all time worked in excess of 38 hours in a week, the cabin crew member will be paid a penalty of 100% additional to the employee's base hourly rate, prorated for time less than a complete hour.
6. The Qantas Group does not support the inclusion of an overtime clause in Schedule B. Any proposal to include provision for overtime should be considered a substantive issue, given it would have implications for employers covered by the Aircraft Cabin Crew Award, who are engaged in regional flying. Similarly, we do not agree that Schedule D should be varied to include regional overtime rates as proposed at paragraph [27].
7. By way of background, the terms of Schedule B, Regional flying largely replicate the provisions of the pre-reform *Flight Attendants (Regional Airlines and Charter Operators) Award 1999* (**Regional Airlines Award**).

8. The Regional Airlines Award did not include provision for overtime. This was referred to during the award modernisation proceedings (see for example submissions of Qantas Group dated 1 May 2009, submissions of Regional Aviation Association of Australia dated 24 April 2009 at [7]), and no overtime provision was included in the Aircraft Cabin Crew Award.
9. In the circumstances, clause 17.2 of the Exposure Draft can be deleted.

International flying – Rostered days off

10. The FAAA proposes the deletion of clause C.4.4 from the Exposure Draft Award, which is in the following terms:

C.4.4 The employer may call employees in to undertake duty as required.

11. The Qantas Group supports the deletion of this clause, on the basis C.4.3 is retained in its current terms, which makes it clear that the employer may contact employees on a rostered day off and request that they work. .

Schedule D – Proposed additional note

12. The FAAA proposes the inclusion of a note at Schedule D, which deals with any arrangements entered into pursuant to clause A.6.1(c) and C.6.1(c) of the Exposure Draft Award.
13. We do not agree that such a note is necessary to avoid confusion, given both clauses A.6.1(c) and C.6.1(c) make it clear that in the circumstances contemplated by those clauses, agreement will also include agreement on an appropriate payment.

Schedule D – Hourly rates of pay

14. The FAAA proposes significant variations to Schedule D of the Aircraft Cabin Crew Award:
 - (a) that the minimum hourly rates of pay for domestic and international cabin crew be derived by dividing the weekly rate of pay by 36, not 38; and
 - (b) that an hourly rate of pay for regional employees be included, again based on dividing the weekly rate by 38.
15. The hours of work for cabin crew was the subject of extensive consideration by stakeholders during the initial award modernisation proceedings. The submissions now made by the FAAA confuse and blur the distinction between hours of work (which are rostered) and minimum rates of pay.
16. In a decision dated 4 September 2009¹, a Full Bench of the Australian Industrial Relations Commission stated the following:

Aircraft Cabin Crew Award 2010

[12] The parties agreed on a number of variations which we have reflected in the final award. A large number of variations sought were justified by reference to an award which only applied to one employer – either Qantas or an airline which has since gone out of existence,

¹ [2009] AIRCFB 826.

Ansett Airlines. In general we have not had particular regard to the contents of enterprise awards.

[13] On the question of hours of work for domestic and international flying there was considerable debate as to the appropriate number of weekly hours. The employers submitted that the annual equivalent of a 38 hour week (1976 hours) is appropriate and is currently the limit applying to low cost airlines established in recent years. It appears however that practices do not reflect this level of working hours although they could if traffic increases. We have decided that a lesser figure of 1872 hours (a 36 hour week) is more reflective of current practices and award provisions in this area of employment.

[14] A number of increased entitlements were sought by the Flight Attendants' Association of Australia (FAAA). We do not consider that a sufficient case has been made out for their inclusion.

17. The Aircraft Cabin Crew Award was published with hours of work of 1872 hours per year for domestic and international flying. Importantly, the 1872 hours are planned hours. It is a feature of the airline operations industry that the hours of work for cabin crew includes both planned and unplanned hours (see clause A.5.1. of the Exposure Draft Award). Unplanned hours do not count towards a cabin crew member's monthly (etc) maximum hours.
18. In this way, the weekly rates of pay are not directly linked to the number of planned hours which are able to be rostered by an employer. It does not follow that the hourly rate is to be derived by dividing the weekly rate by 36.
19. This was acknowledged in the version of the Aircraft Cabin Crew Award published by the AIRC on 4 September 2009, which included other provisions related to rates of pay, based on a 38 hour week.² These provisions are replicated in the current Aircraft Cabin Crew Award, see for example:
 - (a) clause 13.6 (part-time employment) - A part-time cabin crew member employed under the provisions of this clause must be paid for ordinary hours worked at the rate of 1/38th of the weekly rate prescribed for the class of work performed.
 - (b) clause 14.2 (casual employment) - A casual cabin crew member must be paid per hour at the rate of 1/38th of the weekly rate prescribed for the class of work performed, plus 25%. This loading is instead of entitlements to leave and other matters from which casuals are excluded by the terms of this award and the NES.
20. The Exposure Draft Award published by the FWC includes reference to the "minimum hourly rate" at both clauses 10.6 (formerly 13.6) and 11.3 (formerly 14.2). This is consistent with the approach taken in other modern awards. The minimum hourly rate is then set out at clause 14.2, and is based on dividing the weekly rate by 38. Having regard to the matters set out above, this is consistent with the current Aircraft Cabin Crew Award and these provisions should not be disturbed.
21. It is also relevant to note that following publication of the Aircraft Cabin Crew Award in 2009, the FAAA (both the International Division and the Domestic/Regional Division) made applications to vary the Aircraft Cabin Crew Award in respect of the ordinary hours of work (among other matters). Those claims were rejected, and the provisions in relation to ordinary hours of work were undisturbed.³ We refer to the submissions filed by the Qantas

² See the Aircraft Cabin Crew Award published on 4 September 2009, http://www.airc.gov.au/awardmod/databases/airline/Modern/cabin_crew.pdf

³ See [2010] FWA 629 at [7]-[9] and [30] to [32].

Group in those proceedings (AM2009/150) dated 11 December 2009. In responding to the FAAA's application, we made submissions to the effect that a (further) reduction in the hours of work for cabin crew (as proposed by the FAAA) would drive up the hourly rate of pay for a flight attendant unless it was made clear that the hourly rate was determined by dividing by 38, consistent with existing clauses 13.6 and 14.2.⁴

22. The effect of the FAAA's proposal is to increase the hourly rate of pay for employees covered by the Aircraft Cabin Crew Award for all employees. This is opposed by the Qantas Group. We respectfully submit (including having regard to the extensive history which led to the making of the Aircraft Cabin Crew Award) that the FAAA's proposal should be considered a substantive issue, and not a technical or drafting matter.
23. The FAAA has filed separate submissions (dated 25 June 2019) regarding the overtime rates for casual employees covered by the Aircraft Cabin Crew Award in AM2017/51 – Overtime for casuals.
24. Those submissions concern the matters set out at paragraphs 14 to 22 above. In light of this, we consider it appropriate that they be heard together, especially noting our submission that the proposed variation (and draft determination) ought be considered a substantive issue. We note AM2017/51 is listed for directions and report-back on 4 October 2019.

Next steps

25. We will address any further issues arising from the Exposure Draft Award following publication of the final draft by the FWC.

ASHURST AUSTRALIA

24 September 2019

⁴ See Qantas Group submissions dated 11 December 2009,
http://www.airc.gov.au/awardmod/fullbench/variations/AM2009150_sub_Qantas.pdf