

Our ref: JEL\KZS\02 3002 0550

01 November 2017

FAIR WORK COMMISSION

AM2014/254 - AIRLINE OPERATIONS GROUND STAFF AWARD 2010

Submissions on behalf of the Qantas Group

INTRODUCTION

1. We refer to the proceedings before his Honour Vice President Catanzariti with respect to the four yearly review of the *Airline Operations – Ground Staff Award 2010* (**Ground Staff Award**) and to the following documents published by the Fair Work Commission:
 - (a) revised exposure draft of the Ground Staff Award published on 4 January 2017 (**Exposure Draft**);
 - (b) *Revised Summary of Submissions – Technical and Drafting Issues* published on 28 March 2017 (**FWC Summary**), which sets out the Fair Work Commission's understanding of the position which the stakeholders have arrived at; and
 - (c) Draft Report published on 5 October 2017 (**Draft Report**).
2. The Qantas Group has engaged in productive discussions with other stakeholders with respect to both the technical and drafting issues and also the substantive variations which are being sought with respect to the Ground Staff Award.
3. This submission sets out the Qantas Group's position with respect to the items identified in the FWC Summary and Draft Report, and using the FWC Summary item reference. This is done on an exceptions basis only, or where we think there is some benefit in us confirming our understanding of the status of various items.

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TECHNICAL AND DRAFTING ISSUES

Agreed items

4. We refer to the Draft Report. We understand the following items are also agreed between the stakeholders: Items 6, 23, 36 and 42.

Outstanding items

5. The following items remain outstanding:
- (a) Item 8 – Clause 10.2(b) Part-time day workers;
 - (b) Item 11 – Clause 11.2 Casual employment;
 - (c) Item 15 – Clause 14.2(c) Ordinary hours of work – day work;
 - (d) Item 41 – Clause 23.1(b) Overtime;
 - (e) Items 44 and 45 – Schedule B; and
 - (f) Item 48 - Schedule B.2.4, B.3.4, B.4.4, B.5.4 Overtime – Shiftworkers (although we note the Draft Report refers to Item 48 as being moved to substantive issues, and we agree this is the appropriate course of action).
6. It is the Qantas Group's position that a further conference before his Honour Vice President Catanzariti may assist in resolving some of the Items, with others requiring determination by the Fair Work Commission.

Comments on FWC Summary

7. We comment further on these and other items in the FWC Summary further below.

Item 6 – Clause 7.3 Facilitation by majority or individual agreement

8. We refer to the submission from Ai Group dated 27 February 2017 in respect of item 6. We understand this item is agreed between the parties.
9. We confirm the Qantas Group agrees with the revised wording for clauses 16.1(d) and 16.2(e), set out below for ease of reference:

16.1(d) An employer and the majority of affected employees in an enterprise or part of an enterprise may agree to stagger meal breaks to meet the

operational requirements, instead of this provision. An employer and an individual employee may also reach agreement in this regard.

16.2(e) An employer and the majority of affected employees in an enterprise or part of an enterprise may agree to stagger meal breaks to meet the operational requirements, instead of this provision. An employer and an individual employee may also reach agreement in this regard.

10. Clause 7.3(a) would continue to include references to clauses 16.1(d) (Meal break – day work) and 16.2(e) (Meal break – shiftwork) in the table of clauses which provide for facilitation by majority or individual agreement.
11. In addition, we understand the following changes to be agreed between the parties:
 - (a) Clauses 14.2(c) and 14.2(d) will be deleted from the table at clause 7.3(a).
12. Given the various submissions which have been made in respect of items 5 to 7, we think it would be helpful for the stakeholders to review the revised clauses 7.2, 7.3 and 7.4 to ensure all changes have been incorporated.

Item 8 - Clause 10.2(b) Part-time day workers

13. Item 8 remains outstanding.
14. It remains the position of the Qantas Group that the clause does not require amendment. In this regard, the clause in the Exposure Draft reflects the current wording of the Ground Staff Award, and we are not aware of any issues having arisen with respect to its operation.
15. Clause 10.2(b) of the Exposure Draft currently provides as follows:

Subject to the employer's rights in clauses 7.4 and 15.1 to change an employee's hours of work, changes in hours may only be made by agreement in writing between the employer and employee. Subject to clause 31, changes in days can be made by the employer giving one week's notice in advance of the changed hours.
16. We make the following comments about the operation of clause 10.2(b):
 - (a) Clause 7.4 is a summary list of the facilitative provisions which can be utilised upon agreement between the employer and a majority of employees in the workplace or part of it;

- (b) Clause 7.4(b) relevantly provides that where agreement is reached with the majority of employees in the workplace or part of it to implement one of the facilitative provisions listed, that agreement binds all such employees;
 - (c) Of the provisions listed at clause 7.4(a), clause 14.2(c) (Ordinary hours of work – day work) is relevant;
 - (d) Clause 14.2(c) allows for agreement to be reached between an employer and majority of employees to alter the spread of hours by up to one hour at either end of the spread (which is expressed to be 7am to 6pm). If this occurs, the effect of clause 7.4(b) is that such agreement would bind all such employees;
 - (e) Clause 15.1(a) refers to the right of the employer to fix the daily hours of work for day workers from time to time within the spread of hours referred to in clause 14.2(c);
 - (f) The Qantas Group accepts, however, that for part time day workers as described at clause 10.2(a)(i) and (ii), any changes in the actual part time employee's hours of work may only be made by agreement in writing between the employer and employee. It is our submission that the clause already reflects this position;
 - (g) Clauses 7.4 (and therefore 14.2(c) and 15.1(a)) and the employer's rights contained therein are relevant to the span of hours within which the employee may work; and
 - (h) The inclusion of the words "Subject to the employer's rights in clauses 7.4 and 15.1 to "change an employee's hours of work" is directed at ensuring there can be no suggestion that the requirement to obtain an employee's agreement to a change in the number of hours displaces the employer's rights to make changes, for example, to the span of hours as contemplated by clauses 7.4 and 14.2(c).
17. Various without prejudice proposals have been circulated in respect of item 8. Having regard to the above matters, the Qantas Group is prepared to agree to the following amendments to clause 10.2(b):

Subject to the employer's rights in clauses 7.4 and 15.1 to change an employee's hours of work, changes in hours to be worked by a part-time employee may only be made by agreement in writing between the employer and employee and in the form set out at clause 10.2(a). Subject to clause 31, changes in days can be made by the employer giving one week's notice in advance of the changed hours.

Item 10 – Clause 11.1 Casual employment

18. We confirm our understanding that clause 11.1 of the Exposure Draft will be replaced with:

A casual employee is an employee engaged as such.

Item 11 – Clause 11.2 Casual employment

19. Item 11 remains outstanding.
20. The Qantas Group remains prepared to agree to replace the last sentence of clause 11.2 of the Exposure Draft with the following (changes shown in red and underlining):

A casual employee must be paid the ordinary hourly 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, such as annual leave, personal/carer's leave and notice of termination.

21. We note the following with respect to Item 11:
- (a) The Qantas Group refers to the September 2015 decision, and the conclusion reached at paragraph [110], namely that "the casual loading will be expressed as 25% of the ordinary hourly rate in the case of awards which contain all purpose allowances, and will be expressed as 25% of the minimum hourly rate in awards which do not contain any such allowances";
 - (b) Accordingly, we understand the 25% loading is calculated on the ordinary hourly rate (and not the minimum hourly rate);
 - (c) The 25% casual loading is not an all-purpose rate; and
 - (d) For a casual employee, shift penalties and loadings are calculated on an employee's ordinary hourly rate (not the employee's ordinary hourly rate plus 25%).

Item 14 – Clause 12.17 Reduction of payment

22. We refer to the submission from Ai Group dated 27 February 2017 in respect of item 14.
23. We confirm the Qantas Group agrees with the revised wording for clause 12.16 (whereby clause 12.17 now appears as clause 12.16(d)).

Item 15 – Clause 14.2(c) Ordinary hours of work – day work

24. Item 15 remains outstanding.
25. We understand some stakeholders support the inclusion of a new subclause to the effect that "any change to rosters or hours is subject to the consultative provisions in clause 31".
26. The Qantas Group does not support the inclusion of these words, and maintains that there is no need for internal cross-referencing at clause 14.2 or clause 14.3. We can provide more detailed submissions in respect of this matter if appropriate.

Item 16 – Clause 15.1(a) Method of arranging ordinary hours

27. We confirm our understanding that the Exposure Draft reflects the agreement reached between the stakeholders, ie that clause 15.1(a) should be in the same terms as clause 28.4(a) of the current Ground Staff Award.

Item 23 – Clause 17.6 Multiple shift allowance

28. We understand Item 23 is now agreed.
29. We refer to the submission from Ai Group dated 27 February 2017 in respect of item 23. We confirm the Qantas Group agrees with the revised wording for clause 17.6 (which reflects the wording at clause 30.6(a) and (b) of the current Ground Staff Award).

Item 36 – Clause 19.7(e)(i)

30. We understand Item 36 is now agreed.
31. During the consultations between stakeholders, the ALAEA identified that the correct CAO reference is 145.A.30(f). We confirm that the Qantas Group agrees with this, and that the reference at clause 19.7(e)(i) to CAO 104.1.3.2 should be replaced with CAO 145.A.30(f).

Item 37 – Clause 19.7(e)(i)

32. We understand that Schedule C to the Exposure Draft may be updated to include the additional payments at clause 19.7(e) of the Exposure Draft.

Item 41 – Clause 23.1(b) Overtime

33. We understand Item 41 remains outstanding.

34. The stakeholders have been in discussions about the unions' proposal in respect of Item 41. We confirm the Qantas Group agrees with the following amendment to clause 23.1(b):

For the purpose of this clause, **ordinary hours** means the hours worked in any enterprise, fixed in accordance with clauses 14.2-(e), 14.3 or 15.1(a).

35. This is based on the Qantas Group's understanding that overtime is not payable in circumstances where there is a change to the shift roster made in accordance with the Ground Staff Award (eg a change notified by the employer under clause 17.2). We understand however that other stakeholders may still be considering their position.

Item 42 – clause 25.1 (Annual leave)

36. We understand Item 42 relates to a comment by the ASU, as opposed to an issue arising from the Exposure Draft.

Items 44 and 45 – Schedule B

37. We understand Items 44 and 45 remain outstanding, although there is some agreement between the stakeholders about the operation of the Schedules and the desired outcomes.
38. We refer to the submission from Ai Group dated 27 February 2017 in respect of Items 44 and 45.
39. The Qantas Group supports the proposed amendments to Schedule B to make it clear that the rates are expressed as a percentage of the minimum hourly rate.

Item 48 – Schedule B.2.4, B.3.4, B.4.4, B.5.4 Overtime – Shiftworkers

40. Item 48 remains outstanding.
41. The stakeholders have had numerous discussions about the overtime rates for shiftworkers and non-continuous shiftworkers on Sundays.
42. We consider any proposal to change the overtime rates payable to shiftworkers is a substantive issue.

We welcome the opportunity to expand further on these submissions.

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