

**IN THE FAIR WORK COMMISSION**

**Matter No.:** AM2018/14

**Re Application by:** Australian Federation of Air Pilots

**OUTLINE OF SUBMISSIONS IN REPLY OF THE AUSTRALIAN FEDERATION OF AIR PILOTS**

1. This Outline of Submissions replies to the:
  - a) Outline of Submissions and Evidence in Response filed by Alliance Airlines Pty Ltd ("**Alliance**") dated 27 March 2019 ("**Alliance Submissions**"); and
  - b) Outline of Submissions in Reply to AFAP's Submissions filed by the Regional Express Group of Companies ("**Rex**") dated 29 March 2019 ("**Rex Submissions**").
2. No outline of submissions in response were filed and served by the Regional Aviation Association of Australia ("**RAAA**").
3. The Australian Federation of air Pilots ("**AFAP**") refers to and repeats its Outline of Submissions filed on 13 February 2019 and its Outline of Submission in Response dated 28 March 2019.

**Alliance Submissions**

4. In response to paragraph B3 of the Alliance Submissions, clearly the liability of an employer under clause 16.2 of the Air Pilots Award 2010 ("**Air Pilots Award**") only extend to qualifications necessary to perform the duties required by the employer. The AFAP is not suggesting that the liability extends to "*qualifications which a pilot may desire, that are not relevant, for example, to the duties of the aircraft which the employer requires the pilot to perform/fly*".
5. In response to paragraph B8, the Alliance Submissions are selective in quoting Commissioner Wilks. In particular, Alliance ignores the statement "[t]he current award provides for training in

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*much greater detail than that in the draft sub clauses. These provisions outline the current minimum entitlement in very simple terms".* Accordingly, it is explicit that the training contemplated by clause 24 of the *Pilots' (General Aviation) Award 1984* [Print F6276] was retained during the simplification process that resulted in the *Pilots' (General Aviation) Award 1998* [Print R0200].

6. In response to paragraphs B10 – B15 of the Alliance Submissions, there is no evidence put forward that the types of training dealt with by the training clauses in their various iterations altered over time. The circumstances in which Air Pilots Award was made (including its history), demonstrate that the training referred to in clause 24 of the *Pilots' (General Aviation) Award 1984* is the same training that is referred to in clause 16.2 of the Air Pilots Award.
7. Indeed, the training dealt with in *Jetgo Australia Holdings Pty Ltd v Goodsall* [2015] FCCA 1378 was exactly the type of training which Alliance and the RAAA seek to exclude from the clause 16.2 and 16.5 of the Air Pilots Award. That training was type rating for the Embraer 135 and Embraer 145. Vasta J clearly proceeded on the basis that this type of training fell within the scope of clause 16.
8. In response to paragraphs B17 – B21, the Alliance Submissions take an overly literal and selective reading of the OEA draft policy. Read in its entirety, the draft policy refers to the types of training sought to be excluded by Alliance.
9. It is unclear to the AFAP why submissions have been made in relation to the Witness Statement of Simon John Lutton dated 13 February 2019. These are matters for cross-examination and the AFAP makes no comment to this section of the Alliance Submission until Mr Lutton gives evidence.

#### **Rex Submissions**

10. As the AFAP understands them, the Rex Submissions take issue mainly with the clarity of the variation proposed by the AFAP. To the extent that the proposed variation is unclear, the AFAP is open to considering alternative drafting that makes clear the interpretation of the AFAP. We note that a conference has been listed before Vice President Catanzariti on 2 May 2019 and this would be an appropriate time in which to discuss the drafting. To be clear (and particularly in response

to paragraph 17 of the Rex Submissions), the AFAP's proposed variation does not seek to expand the reach of clause 16 of the Air Pilots Award.

11. The Rex Submissions (apart from Rex's adoption of the material filed by Alliance and the RAAA) contain no material that would assist in ascertaining the meaning of clause 16.2 or clause 16.5 of the Air Pilots Award in the context of an application made under section 160 of the *Fair Work Act 2009* ("**FW Act**"). The Rex Submissions are irrelevant to the determination of such an application.
12. As stated previously, the AFAP recognises that training bonds can exist, however they must be created at the enterprise level through an enterprise agreement that has been subject to the relevant statutory tests and safeguards (such as the better off overall test).
13. Both Alliance and the RAAA (including Rex) seek to alter the safety net set by the Air Pilots Award through the guise of an application made under section 160 of the FW Act. Such an application is an inappropriate vehicle to substantively redistribute the liability of the employer under clause 16 of the Air Pilots Award.

  
Australian Federation of Air Pilots

17 April 2019