

IN THE FAIR WORK COMMISSION

Title of Matter: Four Yearly Review of Modern Awards
Section: s. 156 - 4 yearly review of modern awards
Subject: Air Pilots Award 2010 - Substantive Issues

OUTLINE OF SUBMISSIONS IN SUPPORT OF DRAFT CLAUSE

A. BACKGROUND

1. This outline of submissions is made on behalf of the Regional Express Group of Companies (**Rex**), comprising Regional Express Holdings Pty Ltd, trading as Regional Express Airlines, Pel-Air Aviation Pty Ltd (**Pel-Air**) and the Australian Air Pilots Academy (**AAPA**).
2. We refer to and rely on the background to this matter as set out at paragraphs [2] – [8] of the Outline of Submissions in Reply to AFAP’s Submissions filed on 29 March 2019 on behalf of Rex. There now appears to be agreement between the parties that the Award should include a clause permitting the use of training bonds, however there remains disagreement in respect of a few key aspects of such a clause.
3. For the reasons set out in these submissions, Rex does not agree with the proposed position agreed between Alliance Airlines Pty Ltd (**Alliance**), the Regional Aviation Association of Australia (**RAAA**) and the Australian Federation of Air Pilots (**AFAP**).
4. Set out at Annexure 1 is the clause proposed by Rex. It is set out in the format of marked up amendments to the proposed Alliance/RAAA/AFAP clause.

B. OVERVIEW OF REX'S OPERATIONS

5. Rex was established in 2002 and operates Australia's largest independent regional airline. Prior to 2002 the core of Rex's business was operated by two airlines, Kendall Airlines and Hazelton Airlines. These entities were part of the Air New Zealand / Ansett Australia Group.
6. In September 2001 Air New Zealand / Ansett Australia Group were put into voluntary administration. Seeing an opportunity to revive the regional aviation part of the business, a group of investors bought Kendall Airlines and Hazelton Airlines out of administration. The investors risked millions of dollars in order to save hundreds of jobs and ensure that regional Australian communities would continue to have access to air services.

7. Rex operates in New South Wales, Victoria, Queensland, South Australia, Western Australia and Tasmania with a fleet of approximately 60 SAAB 340 aircraft and a range of smaller aircraft operated by subsidiaries. Rex prides itself on providing essential and affordable passenger and cargo air transport to regional Australia. Rex understands the needs of regional communities, and often co-invests with local communities to develop ways to start or maintain marginal routes that would otherwise not have any air service.
8. In FY17/18, Rex transported over 1.2 million passengers across Australian regional aviation routes and otherwise currently has scheduled routes to and from 7 major domestic ports being Melbourne, Townsville, Sydney, Adelaide, Cairns, Brisbane and Perth, and approximately 53 smaller regional ports across New South Wales, North Queensland, South Australia, Victoria, Western Australia and Tasmania.
9. As outlined at paragraphs [21] – [40] the Witness Statement of Christopher Hine, filed 29 March 2019, Rex has utilised training bonds since approximately December 2003 as a means of addressing high pilot attrition rates, which result in significant costs for Rex.
10. Since approximately 2005 Rex has included a clause regarding training bonds in its enterprise agreements. There has never been any suggestion that such a clause needed to pass the Better Off Overall Test (**BOOT**) and it has always been understood by Rex that such clauses were permissible in aviation industry enterprise agreements and were not incompatible with the training clause in the relevant award.

C. OVERVIEW OF REX'S POSITION

11. While there is some broad agreement between the parties in respect of the proposed training clause, there remain three key areas of dispute, as set out below.

When the bond starts to reduce

12. The AFAP, Alliance and RAAA proposal provides that a training bond should start to reduce on a monthly pro rata basis over the term of the training bond from the commencement of training. There has been no reasoning put forward as to why a training bond should reduce before a pilot begins providing valuable service to the employer. Indeed the purpose of the training to which the bond applies is to prepare a pilot for fully operational service. It therefore makes no sense for the reduction to commence before the pilot reaches this point. The intention of a training bond is to:
 - (a) act as a safeguard for an airline against incurring unreasonable costs associated with training a pilot who then ceases employment before providing a reasonable return of service as fully operational pilot; and
 - (b) to provide a sufficient disincentive for such pilots to leave employment before they provide sufficient valuable service as a fully operational pilot.

Having the training bond reduce before a pilot is checked to line achieves neither of those objectives. To the contrary, it lessens the benefit of the bond to those objectives.

13. Accordingly, Rex submits that the bond should only start to reduce at the point at which a pilot commences providing valuable service in return for the training provided and paid for by the airline. That is, at the time they are successfully checked to line and commence operational flight duties no longer under training.
14. Where the training bond begins to decrease at the time of commencement of training, a situation may arise where there is a disruption during a pilot's training such as an illness or period of leave without pay that results in a delay in the pilot being successfully checked to line. On the AFAP, Alliance and RAAA's version of the clause, where such a delay extends for a significant period of time such as six months, the bond would have already reduced by a quarter, notwithstanding that no valuable service would have been provided by the pilot. This represents an unreasonable risk for the employer and does not achieve a fair balance between the interests of the pilot and the employer. Under the proposed award provision (both the RAAA, Alliance, AFAP position and the Rex position) a pilot would not be required to repay any of the training bond if due to serious illness they did not complete the training. Both proposed provisions only require repayment of the bond when employment ends due to resignation or termination by the employer for serious misconduct.

Included Training

15. The AFAP, Alliance and RAAA proposal provides that a training bond can only be entered into in respect of:
 - (a) class and type rating training necessary to operate a particular aircraft, including the aircraft type for which the pilot was initially employed (including pre-employment training) and subsequent type rating training for additional aircraft types; and
 - (b) upgrade training (change in rank and/or status training).
16. Rex submits that it is fundamental that a bond should be able to be entered into whenever there is a significant cost associated with training required in the employment of a particular pilot. There is no basis as to why this should be limited to upgrade training only, as opposed to change in grade training. Further, the additional wording in the proposed clause set out at Annexure 1 is necessary to provide clarity that a training bond may be entered into:
 - (a) by a prospective employer to enable it to operate as a condition of employment, as is the current practice; and
 - (b) in respect of all training that is necessary to check to line and operate a particular aircraft, so as not to unreasonably limit the elements of a pilot's training that can be included.

Included costs

17. The AFAP, Alliance and RAAA proposal provides that the training bond amount cannot exceed 50% of the actual cost of the training, and that:

16.6(3) For the purpose of clause 16.1(1)(D), the “actual cost of the training” means all direct costs to the organisation associated with, or in connection with, providing a pilot with the training the subject of the bond being:

- *Operation costs of flying the aircraft in non-revenue operations*
- *External training provider costs*
- *cost of simulator and other training devices*
- *Ground school training costs*
- *Facility hire costs*
- *Administrative costs of collating the required documentation to meet CASA regulations*
- *Cost of materials (operational documentation and devices) provided to the trainee*

18. Rex submits that the combination of a bond only being allowed in respect of 50% of the costs and the costs being narrowly defined would mean that bonds currently being used and agreed would not be permissible. This is because neither of these initiatives are presently applied to the bonds.

19. Rex submits that the “actual cost of the training” should include all direct and indirect costs to the organisation associated with, or in connection with the training. For example, under the RAAA/Alliance/AFAP proposal the maximum bond amount Rex could have would be \$11,000. Rex’s direct costs associated with training are estimated at approximately \$22,000 per pilot, indirect costs are estimated at approximately \$6,100 and administrative and operational costs are estimated at approximately \$1,300.¹

20. The entirety of the costs included during a pilot’s training period are to enable a pilot to become a productive employee who is no longer operating under training or supervision. Therefore any associated costs should properly be included in the bond. For example a pilot in training is required to be supervised by a checking pilot, and in some circumstances, a safety pilot, whose sole purpose is to provide an additional safety measure for a trainee pilot.

¹ Witness Statement of Christopher Hine, filed on behalf of Rex, 29 March 2019, [27].

In addition, there are costs associated with travel and accommodation for a safety and checking pilot where they need to stay overnight out of their home base. If a pilot leaves prior to the end of their bond, an airline would be required to repeat those costs with a replacement pilot, and accordingly Rex submits that there is no reason these costs should not be able to be included or counted in a training bond. Rex submits that in circumstances where an airline is not able to claim 100% of the actual costs of training, the listed matters for which 50% of the costs may be recovered ought not be exhaustive and ought to cover all costs direct and indirect. Such matters represent the costs that can be included in a training bond. The limitation is only there to ensure that the bonds are not for amounts greater than costs actually incurred. It remains a matter of individual negotiation to agree the actual bond amount and for the costs that may be included as part of a training bond as part of either an enterprise bargaining process, or individual negotiation in respect of a pilot's contract of employment.

21. If the clause is approved in its current form, the enterprise agreement training clauses entered into by airlines such as Rex will not pass the BOOT. Where the ability to bond for training costs is capped at 50% of direct costs, Rex submits that there needs to be a much broader range of costs included to enable airlines to properly recover the cost of training a pilot in circumstances where there is no valuable return for service.
22. Training bonds as they are currently utilised by Rex have not reduced pilot attrition rates to 0%. In the 2017/2018 financial year the pilot attrition rate at Rex was 29.1%.² Any decrease in the amount of a training bond that can be entered into by an airline and pilot is likely to result in an increase in attrition. Pilot attrition is a significant issue for Rex.³ Without the ability to adequately cover training costs by way of a training bond, Rex's viability and air services to regional and remote communities would be jeopardised.⁴

E. CONCLUSION

23. For the reasons set out above, the variations sought by the AFAP, Alliance and RAAA to clause 16.2 of the Pilots Award should not be wholly adopted. Instead, the variations proposed by Rex to clause 16 of the Pilots Award should be adopted as such amendments clarify the ambiguity or uncertainty associated with clause 16 of the Pilots Award and reflect the existing and long-standing practice of employers in the industry as to training bonds. The Rex proposed amendments are consistent with and form part of a fair safety net that meets the Modern Award objectives.

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18 December 2019

² Ibid, [35].

³ Ibid, [37].

⁴ Ibid.

Annexure 1 – Proposed Training Clause

- 16.6(1) An employer and a pilot may, by agreement, enter into a training bond whereby the costs of training which have been or are to be borne by the employer may be recovered from the pilot if the pilot ceases to be employed by the employer within a period of time agreed between the pilot and the employer, subject to the following:
- A. The Training Bond must be agreed between the employer and an individual pilot.
 - B. The Training Bond must be in writing, specify the amount of the bond, and be signed by the pilot prior to commencing training.
 - C. The maximum term of the Training Bond will be two (2) years for piston engine/turbo prop aircraft and three (3) years for jet aircraft.
 - D. The training bond amount cannot exceed fifty percent (50%) of the actual cost of the training.
 - E. The Training Bond amount reduces on a monthly pro rata basis over the term of the Training Bond ~~from the commencement of the training~~ when the pilot successfully checks to line.
 - F. A pilot can only be subject to one Training Bond at a time. Where a pilot is subject to one Training Bond and subsequently enters into another, the bonds are not cumulative and the highest value Training Bond will apply.
 - G. The employer can only recover an amount payable under a Training Bond where the pilot resigns, or their employment is terminated for serious misconduct.
 - H. No amount can be recovered in the case of redundancy, loss of medical licence by the pilot, termination of employment by the employer (except in the case of serious misconduct) or where the Pilot fails the training course.
 - I. A Training Bond cannot be entered into in circumstances where an employer directs a pilot to undertake training.
- 16.6(2) For the avoidance of doubt, a Training Bond can only be entered into between an employer (or prospective employer in the case of a pre-employment endorsement) and a pilot in respect of:
- A. Class and type rating training, necessary to check to line and operate a particular aircraft, including the aircraft type for which the pilot was initially employed (including pre-employment training), subsequent type rating training for additional aircraft types ~~and initial class and type rating training~~; and
 - B. Change in grade Upgrade training (change in rank and/or status training).
- 16.6(3) For the purposes of clause 16.6(1)(D), the "actual cost of the training" means all direct and indirect costs to the organisation associated with, or in connection with, providing a pilot with the training the subject of the bond ~~being~~ including but not limited to (where applicable) the following:
- A. Operational costs of flying the aircraft in non revenue operations
 - B. Cost of providing a trainer including checking personnel
 - C. External training provider costs
 - D. Cost of simulator and other training devices
 - E. Ground school training costs

- F. Facility hire costs
- G. Personnel related costs for the trainee and trainer/s such as the cost of remuneration, travel, accommodation and/or meals, and any associated on-costs such as superannuation and payroll tax
- H. Administrative costs ~~of~~, such as collating the required documentation to meet CASA regulations
- I. Cost of materials (operational documentation and devices) provided to the trainee
- J. Provision of a safety pilot