

REPORT TO THE FULL BENCH

Fair Work Act 2009

s.156 – 4 yearly review of modern awards



4 yearly review of modern awards – award stage

(AM2019/17)

Aircraft Cabin Crew Award 2010

(AM000047)

COMMISSIONER BISSETT

MELBOURNE, 23 DECEMBER 2019

[1] Following a decision of the Full Bench three conferences have been held with the Flight Attendants' Association of Australia (FAAA), Qantas Group and The Australian Industry Group (AiG) with respect to amendments proposed by the FAAA to the Exposure Draft of the *Aircraft Cabin Crew Award 2010 (Award)*.

[2] The Exposure Draft is in Tranche 3 of the Awards set down for finalisation before the Full Bench in AM2019/17.

[3] The FAAA seek a number of changes to the Award. Some of those changes are minor or technical changes not generally in contention (for example, deleting the definition of calendar year) whilst others are quite contentious. For reasons which do not need to be set out here the substantive changes sought by FAAA were not canvassed in earlier 4 yearly review proceedings in relation to this Award before Deputy President Gostencnik in AM2014/253 although the FAAA has been engaged in matters before relevant common issues Full Benches.

ISSUES

[4] The substantive issues now raised in relation to the Exposure Draft for this Award are detailed below:

1. Overtime for full-time and part-time regional crews

The Exposure Draft (and the Award) has three main parts dealing separately with international, domestic and regional flying. Each part deals with allowances, hours of work, rostering, duty limitations and rest periods, call-in on days off etc.

The Regional flying part of the Exposure Draft (and the Award) does not contain any overtime provisions (while the Domestic and International flying parts do).

FAAA are seeking the inclusion of an overtime clause for regional flying that provides an additional payment for overtime. The FAAA say that this would be consistent with

the modern awards objective set out in s.134(da)(i) of the *Fair Work Act 2009* (FW Act).

The FAAA also raise a question as to whether clause B.2.3(a) of the Exposure Draft is inconsistent with the NES. Clause B.2.3 restricts an employer from rostering regional crew to fly where that would result in total hours exceeding 90 hours of duty in the fortnight.

2. The appropriate divisor for determining the hourly rate of pay

Under the current Award a divisor of 38 is used to determine the hourly rate of pay for part-time and casual employees. No hourly rate is otherwise prescribed.

The FAAA proposes that the divisor should be 36, consistent with total ordinary hours of 1872 per year for international and domestic flying crews (see clauses A.2.1 and C.2.1 in the Exposure Draft) which equates to a 36-hour week. For this reason it says that the hourly rate should be determined by dividing the weekly rate by 36 (and not 38 as is the current case).

Qantas Group do not agree with the proposal expressed by the FAAA. It says that the 38-hour divisor was settled for good reason and that an alteration to the divisor will affect not just overtime payments but the rates paid to casual and part-time employees. Further, Qantas Group says that the effect of the FAAA proposal for regional flying crews would equate to the divisor being slightly more than 24 per week. It is not clear if FAAA are proposing a divisor of 24 for regional flying crews for the purpose of determining the hourly rate. This would then flow on in relation to item 1 and the overtime rate paid the regional flying crew and to casual employees.

Further, Qantas Group also raise issues in relation to properly set minimum rates and relativities if a change to the divisor is made.

3. Casual employees

Overtime for casual employees is currently a matter before the common issues Full Bench in AM2017/51. This Bench is being presided by Vice President Hatcher.

Qantas Group are of the view that it is not possible to resolve matters in relation to overtime for casual employees in relation to the Exposure Draft for this Award through AM2017/51 isolated from the issues of hours of work and the appropriate divisor for determining the hourly rate of pay.

Qantas Group and FAAA both consider that matters in relation to the Exposure Draft for this Award should be carved out of proceedings for Overtime for casuals Full bench and that issue, along with at least those two raised above, be referred for determination to a specifically constituted Full Bench as part of the 4 yearly review process.

REPORT

[5] From the conferences conducted with the parties it would appear that there is complexity in the Award which is then replicated in the Exposure Draft. These matters go to

maximum working hours and that interaction with flying hours and the determination of the number of ordinary hours to be worked per week and the appropriate hourly rate to be inserted into the Exposure Draft. They are all interrelated.

[6] Further, there does appear to be a real issue as to whether the Exposure Draft (and Award) meets the modern awards objective given that there is no *additional* remuneration for regional flying crew working overtime and whether it is inconsistent with the NES. Once these questions are asked the other issues outlined above will come to the fore.

[7] There is a detailed history to the Award and it may be effected by regulatory overlays.

[8] The Overtime for Casuals Full Bench has issued directions which require (given these hours related matters were not resolved at conference on 18 December 2019) the parties to this Award to file submissions and evidence in relation to overtime for casual employees by 17 January 2020.

[9] If the matters raised in this Report are to be referred to a separately constituted Full Bench the directions issued in relation to this Award by the Overtime for Casuals Full Bench should be set aside. Further, such a separately constituted Full Bench should finalise the review of this Award including the resolution of any drafting and technical issues.



COMMISSIONER

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