**IN THE EMPLOYMENT COURT**
**AUCKLAND**

**[2012] NZEmpC 88**
**ARC 40/11**

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| IN THE MATTER OF | proceedings removed |
| BETWEEN | NEW ZEALAND AIR LINE PILOTS' ASSOCIATION INC<br>Plaintiff |
| AND | AIR NEW ZEALAND LIMITED<br>Defendant |

Hearing: 1 March 2012
(Heard at Auckland)

Counsel: Richard McCabe, counsel for plaintiff
David France, counsel for defendant

Judgment: 8 June 2012

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**JUDGMENT OF JUDGE CHRISTINA INGLIS**

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[1] These proceedings were removed from the Employment Relations Authority. They relate to the extent to which pilots employed by Air New Zealand Ltd are contractually entitled to a breakfast allowance. In particular, whether a pilot departing from home base where the flight duty is planned, prior to report, to be 11 hours or less in duration, is entitled to a breakfast allowance.

**Background**

[2] In 1991 the parties negotiated a collective employment contract (the 1992 collective). There is no dispute that under the collective a pre-existing entitlement to breakfast was removed when a pilot was commencing duties from home base, "unless the breakfast pertains to a flight duty planned, prior to report, to be in excess of 11 hours duration" (s 10.3.3).

[3] In 1998 the parties commenced bargaining for a new collective, which was subsequently ratified in 1999. There is a dispute about what was agreed during the negotiations for the 1999 collective. This is referred to in further detail below.

[4] Section 10 of the current (2010) collective agreement is entitled "On Duty Provisions". It provides that:

> Section 10: On Duty Provisions
>
> 10A.1
>
> In any case where a pilot is required to travel or be absent from his home base on the Company's business ... he shall, where procurable, be provided with first class meals, travel and hotel accommodation while so travelling or absent except as otherwise provided in this document.
>
> 10.3 <u>MEALS</u>
>
> 10.3.1 General
>
> 10.3.1.1 The Company shall provide or arrange proper and sufficient meals for pilots while on duty (excluding on call duty) and time to eat them. In lieu of providing proper and sufficient meals, the company will reimburse a pilot with such sum, and in such manner, as may be agreed to from time to time between the Company and the Contract Management Group.
>
> 10.3.1.2 An allowance shall be paid in lieu of lunch during attendance at ground courses or meetings. ...
>
> 10.3.2 Wholly Internal Operations
>
> 10.3.2.1 <u>Rostering and Provision of Meals</u>
>
> The Company shall provide meals as follows. Pilots may accept an allowance in lieu of lunch, dinner, and/or supper as herein provided. ...
>
> 10.3.3 All Other Operations
>
> 10.3.3.1 <u>In flight meals</u>
>
> 10.3.3.1.1 Entitlement to a meal, or meal allowance, arises when a pilot's flight duty period covers all or part of the following times:
>
> 0630 to 0730 Breakfast …
>
> This will normally be based on local time at the point of departure and arrival. Any entitlement prior to the mid-point of the duty is referenced to the point of departure, and any entitlement after the mid-point is referenced to the point of arrival.

> 10.3.3.1.2 Breakfast will not be provided at a pilot's home base unless the breakfast pertains to a flight duty planned, prior to report, to be in excess of 11 hours duration.
>
> 10.3.3.1.3 Breakfast on the ground will be provided, or an allowance paid in lieu, for duties commencing at a stopover port.
>
> 10.3.3.1.5 Should circumstances arise where a pilot does not receive an in-flight meal to which he is entitled a claim may be made for that meal allowance.
>
> 10.3.3.1.7 Notwithstanding the Company's responsibility to provide proper and sufficient meals for operating flight crews whilst in flight, where an entitlement arises under 10.3.3.1.1, meal allowances shall be paid for all two pilot flight duties. In the case of augmented crews, where an entitlement arises under 10.3.3.1.1, breakfast or lunch may be provided in lieu of the allowance but the allowance, when an entitlement exists, will always be paid for dinner.
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> 10.3.3.2 Stopover Ports
>
> In lieu of providing first class meals as required in this section, the Company shall pay its pilots an allowance for each meal which will be assessed on the following basis: ...

[5] The terms of the 2010 collective agreement are materially the same as those of the agreements since 1999.

[6] The New Zealand Air Line Pilots' Association Inc (ALPA) submits that the contractual terms are unambiguous, and that for non-domestic operations, not otherwise specifically provided for, two pilot crews with flight duties under 11 hours must be paid a breakfast allowance under s 10.3.3.1.7. It is accepted that no entitlement to a breakfast meal itself arises in such circumstances.

[7] The plaintiff says that s 10.3.3.1 provides a general entitlement to a meal or an allowance if a pilot is on duty during the prescribed times. It is submitted that s 10.3.3.1.7 provides a specific exception to the general entitlement to receive either a meal or an allowance, and that a meal allowance is payable for all two pilot flight duties.

[8] The plaintiff submits that its interpretation is consistent with the way in which it says Air New Zealand acted following the conclusion of the 1999 collective agreement, by paying a breakfast allowance for a period of time. This submission is said to be bolstered by Air New Zealand's failure to take any action to recover the

allowances that it now says it ought not to have paid. It is submitted that Air New Zealand simply changed its mind as to what s 10.3.3.1.7 means, and what was bargained for, and unilaterally decided to cease allowance payments. This, it is submitted, is unconscionable and the Employment Court's equity and good conscience jurisdiction ought to be exercised to apply the principles of estoppel to Air New Zealand's alleged changed position.

[9] The defendant submits that, properly interpreted, s 10 provides that while a pilot has a general entitlement to a breakfast meal or a breakfast meal allowance when a pilot's flight duty covers all or part of the time from 0630 to 0730, this does not apply from a pilot's home base unless the breakfast relates to a flight duty planned, prior to report, to be in excess of 11 hours duration. It is also submitted that the defendant's interpretation is consistent with the parties' dealings over time.

[10] The defendant submits that its interpretation is consistent with the purpose of the relevant provisions – namely, to provide a meal for a pilot while on duty and if that is not practicable or possible an allowance is to be paid in lieu. It follows, it is said, that an entitlement to a meal must exist before an entitlement to a meal allowance can arise.

## Discussion

[11] The Court is obliged to adopt a principled approach to the interpretation of employment agreements and disputes as to meanings are to be objectively determined: *Silver Fern Farms Ltd v New Zealand Meat Workers and Related Trade Unions Inc*[1] citing *Vector Gas Ltd v Bay of Plenty Energy Ltd*.[2]

[12] In *Vector Gas*, the Supreme Court highlighted the significance of context as a necessary ingredient in ascertaining the meaning of contractual words, emphasising commercial substance and purpose over semantics and the syntactical analysis of words.

[1] [2010] NZCA 317, [2010] ERNZ 317.
[2] [2010] NZSC 5, [2010] 2 NZLR 444.

[13] In *Vector Gas*, McGrath J summarised and adopted the five principles of interpretation identified by Lord Hoffmann in *Investors Compensation Scheme Ltd v West Bromwich Building Society*[3] as follows:

> [61] In 1998, the House of Lords further clarified English law on when it is permissible to refer to extrinsic material in the interpretation of commercial agreements when Lord Hoffmann fashioned five principles of interpretation in his judgment on behalf of the majority in *Investors Compensation Scheme Ltd v West Bromwich Building Society*. In summary, Lord Hoffmann said that interpretation of a commercial agreement is the ascertainment of the meaning it would convey to a reasonable person who has all the background knowledge which would reasonably have been available to the parties in the situation in which they were at the time of contract. The language the parties use is generally given its natural and ordinary meaning, reflecting the proposition that the common law does not easily accept that linguistic mistakes have been made in formal documents. The background, however, may lead to the conclusion that something has gone wrong with the language of an agreement. In that case the law does not require the courts to attribute to the parties an intention which they clearly could not have had. The natural and ordinary meaning should not lead to a conclusion that flouts business common sense.

[14] Tipping J observed that:[4]

> The ultimate objective in a contract negotiation dispute is to establish the meaning the parties intended their words to bear. In order to be admissible, extrinsic evidence must be relevant to that question. The language used by the parties, appropriately interpreted, is the only source of their intended meaning. As a matter of policy, our law has always required interpretation issues to be addressed on an objective basis. The necessary inquiry therefore concerns what a reasonable and properly informed third party would consider the parties intended the words of their contract to mean. The court embodies that person. To be properly informed the court must be aware of the commercial or other context in which the contract was made and of all the facts and circumstances known to and likely to be operating on the parties' minds. Evidence is not relevant if it does no more than tend to prove what individual parties subjectively intended or understood their words to mean, or what their negotiating stance was at any particular time.

[15] In considering the use of extrinsic material, Tipping J went on to state that:[5]

> The key point is that extrinsic evidence is admissible if it tends to establish a fact or circumstance capable of demonstrating objectively what meaning both or all parties intended their words to bear. Extrinsic evidence is also admissible if it tends to establish an estoppel or agreement as to meaning.

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[3] [1998] 1 WLR 896 (HL) at 912-913.
[4] At [19].
[5] At [31].

[16] And further that:[6]

> There is no logic in ascribing a meaning to the parties if it is objectively apparent they have agreed what that meaning should be.

[17] Somewhat ironically, but perhaps not uncommonly, both parties contended that the contractual provisions were unambiguous and that their respective interpretations were supported by reference to extrinsic material.

[18] While the plaintiff sought to focus on two subclauses of the collective agreement, s 10 must be read as a whole in order to understand its purpose and meaning.[7] Section 10 sets out a number of on-duty provisions. Section 10A.1 states the general position that where a pilot is required to travel or be absent from his/her home base he/she will be provided with meals, travel and accommodation. That is expressed to be subject to any exceptions provided for in the agreement.

[19] Meals are specifically provided for in s 10.3. Section 10.3.1 sets out a number of general provisions relating to meals, and provides that Air New Zealand will provide "proper and sufficient" meals for pilots while on duty, together with time to eat them (at s 10.3.1.1). If such a meal is not provided, the company is to reimburse the pilot an agreed sum (an allowance).

[20] Wholly internal operations are dealt with under s 10.3.2, and all other operations are dealt with under s 10.3.3. "In flight meals" are provided for under s 10.3.3.1. While this part of the collective agreement is entitled "In flight meals" it is apparent that it relates more broadly to meals during a pilot's on-duty period.

[21] Section 10.3.3.1.1 provides that a pilot is entitled to a meal or a meal allowance when a pilot's flight duty period covers certain times including (for present purposes) 0630 to 0730 (breakfast). Taken in isolation, s 10.3.3.1.1 suggests that where a pilot's duty period covers one of the specified timeframes, an entitlement arises to either a meal or a meal allowance. However, s 10.3.3.1.1 is immediately followed by s 10.3.3.1.2, which states that:

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[6] At [32].
[7] As emphasised by Chief Judge Goddard in *Bachop v Air New Zealand Ltd* [1998] 2 ERNZ 214 at 220.

> Breakfast will not be provided at a pilot's home base unless the breakfast pertains to a flight duty planned, prior to report, to be in excess of 11 hours duration.

[22] The plaintiff contends that s 10.3.3.1.2 is a "red herring" and ought not to be read as providing an exception to the entitlements referred to in s 10.3.3.1.1. Rather, the plaintiff submits that s 10.3.3.1.7, when read with s 10.3.3.1.1, requires the payment of meal allowances for all two pilot flight duties whether or not an entitlement to a meal otherwise exists.

[23] I do not accept the plaintiff's interpretation. Section 10.3.3.1.2 makes it clear that there is no entitlement to breakfast where a flight duty planned is for less than 11 hours. The plaintiff's argument requires reading into s 10.3.3.1.2 an entitlement to an allowance for a meal when there is no entitlement to a meal itself.

[24] The interpretation advanced by the plaintiff is at odds with the evident purpose underlying s 10.3, namely to provide pilots with a meal where an entitlement arises and, if that is not possible (or at the pilot's election), an allowance in lieu of a meal. This is reflected in, for example, the general provision in s 10.3.1.1 ("The Company shall provide ... proper and sufficient meals for pilots while on duty ... In lieu of providing proper and sufficient meals, the Company will reimburse a pilot ..."); s 10.3.1.2 ("An allowance shall be paid in lieu of lunch"); s 10.3.2.1 ("The Company shall provide meals as follows. Pilots may accept an allowance in lieu of lunch, dinner, and/or supper as herein provided."); s 10.3.3.1.3 ("Breakfast on the ground will be provided, or an allowance paid in lieu, for duties commencing at a stopover port."); s 10.3.3.1.5 ("Should circumstances arise where a pilot does not receive an in-flight meal to which he is entitled a claim may be made for that meal allowance."); and s 10.3.3.2 ("In lieu of providing first class meals ... the Company shall pay its pilots an allowance for each meal ...").

[25] Section 10.3.3.1.2 expressly excludes entitlements to breakfast in some, but not all, circumstances (linked to flight time). It would be illogical for s 10.3.3.1.2 to entitle a pilot travelling less than 11 hours to an allowance (but not a meal) and a pilot travelling more than 11 hours to either a meal or (if not available) an allowance. On the plaintiff's analysis s 10.3.3.1.2 would effectively be redundant.

[26] Counsel for the plaintiff submitted that the word "notwithstanding" in s 10.3.3.1.7 was pivotal, and reflected an exception to the general rule (meal *or* allowance) stated in the preceding subclauses. However, it is clear that s 10.3.3.1.7 is directed at addressing the outcome of the Court's judgment in *Bachop v Air New Zealand Ltd*,[8] which the plaintiff took issue with and sought to address by way of its contractual arrangements with the defendant and which is referred to in greater detail below.

[27] I conclude that no entitlement to a breakfast allowance arises under s 10.3.3.1.1 (for the purposes of s 10.3.3.1.7). The effect of s 10.3.3.1.2 is to exclude an entitlement to breakfast in the circumstances at issue in these proceedings. I do not consider that ss 10.3.3.1.1 and 10.3.3.1.7 can be read in isolation from the other provisions in s 10. When read in context, it is clear what the parties intended. I am fortified in the view I have reached by reference to the extrinsic material before the Court.

[28] There is no dispute that the parties had originally provided for an entitlement to a breakfast meal when commencing duties at home base for duties less than 11 hours, but that this was removed in 1992 and has not featured in any of the collective agreements since that date (the entitlement to a breakfast meal for duties exceeding 11 hours remained[9]). The company's evidence, which Mr Nicholson (legal officer for the plaintiff) accepted in cross examination, was that breakfasts stopped being provided to pilots commencing at home base for duties less than 11 hours at this time.[10]

[29] Mr Nicholson was involved in the negotiations for the 1999 collective. His recollection was that the issue of breakfast meal allowances was raised in the context of bargaining for the 1999 collective contract, and that ALPA secured agreement for an entitlement for all two pilot crews to be paid a meal allowance for breakfast, including those pilots commencing at a pilot's home base and being on duty for 11

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[8] [1998] 2 ERNZ 214.
[9] Section 10.3.3.1.2.
[10] It is common ground that some payments were made between 2005 and 2009, although Air New Zealand says that that was in error and rectified as soon as the company discovered that such payments were being made. This issue is discussed at paras [40]-[42].

hours duration or less. His evidence was that from the time the 1999 collective was ratified, Air New Zealand paid pilots a breakfast allowance in accordance with what he says had been negotiated. He says that such payments ceased in 2009, when Air New Zealand "unilaterally" determined that the allowance would no longer be paid.

[30] There was a sharp divergence of evidence on the nature and scope of the negotiations for the 1999 collective, and what was agreed. Mr Hancock was a member of the Air New Zealand negotiating team for the 1999 collective agreement and the subsequent 2002-2004 and 2005 agreements. His evidence was that ALPA did not advance a claim for an entitlement to a breakfast allowance for a duty commencing from home base planned to be less than 11 hours duration in the context of bargaining for the 1999 agreement.

[31] Mr Hancock accepted that a number of issues were discussed during the course of negotiations for the 1999 collective, and that ALPA did attempt to bargain away the effect of this Court's decision in *Bachop* (where it had been held that Air New Zealand was complying with its obligation to provide a suitable meal in flight and that no additional entitlement to an allowance arose in these circumstances[11]). He made the point that the entitlements at issue in *Bachop* were distinct from the allowances now at issue.

[32] Mr Hancock said that any assertion that ALPA pursued a claim, and that there was subsequent agreement, that an allowance should be paid notwithstanding the absence of an entitlement to a breakfast meal is "totally incorrect". His evidence was that the claim was not advanced and that the rationale for its removal in 1992 remained intact – namely that a pilot should have his/her breakfast at home before coming to work.

[33] Mr Craig is the flight crew manager at Air New Zealand. His evidence was that the plaintiff's claim that the entitlement was negotiated, and agreed, as part of the 1999 collective is inconsistent with figures relating to the allowances that have been paid since 1999 and also a non-operational supplementary notice (known as SUPP 2) which is published with each roster for each aircraft fleet and shows a

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[11] At 222.

pilot's entitlement to a meal or an allowance with reference to individual flight duties.

[34] Mr Nicholson's evidence was that the negotiations included the issue of breakfast allowances, essentially to reinsert what had been taken out in 1992. Mr Craig and Mr Hancock's evidence was that this was never the subject of negotiations. Their evidence is supported by contemporaneous documentation, including ALPA newsletters to its members updating developments with the negotiations and what was being bargained for – none of which make any mention of bargaining for a breakfast allowance. Mr Nicholson accepted that his recollection of events was not entirely clear, and readily conceded that the "the picture is not necessarily crystal clear."

[35] In contrast, Mr Hancock (who was unshaken in cross-examination) said that he clearly recalled what was discussed, and was adamant that breakfast allowances were never pursued by ALPA. I accept Mr Hancock's evidence.

[36] And while ALPA's case was that it had succeeded in negotiating a universal entitlement to a breakfast allowance, it is in my view inherently unlikely that, had it achieved such success at the bargaining table, it would not have advised its members of this. No such documentation was before the Court and the documentation that was placed before the Court makes no mention of it.

[37] Further, it is telling that the SUPP 2 document (made available to all pilots outlining their entitlements, including as to individual allowances) contained no reference to a breakfast allowance in the circumstances at issue in these proceedings. In my view, it is most unlikely that had ALPA negotiated a new allowance into the 1999 collective agreement, it would have taken no steps to ensure that the SUPP 2 document contained reference to it. The absence of any such reference is consistent with such an "entitlement" never having been agreed.

[38] Documentation before the Court highlighted the plaintiff's intention, during the course of negotiations for the 1999 collective, that: "all pilots should receive

identical standards of meals and allowances."[12] Adopting the interpretation advanced by the plaintiff would introduce inconsistency of entitlements between pilots – a pilot involved in "wholly internal operations" (s 10.3.2) would not be entitled to breakfast because s/he commenced from home base, but another pilot performing a duty period from home base of less than 11 hours would be entitled to a breakfast allowance.

[39] Mr Craig gave evidence that during the period following the 1999 agreement there was a fall-off in allowances paid. He said that if a new allowance had been included in the agreement there would likely have been an increase, rather than a decrease, in numbers. I accept that that is so, even having regard to Mr Nicholson's evidence that flight patterns may have had some effect on the number of allowances paid. There was no direct evidence before the Court that any pilots received a breakfast allowance from 1999 to 2005. Air New Zealand's evidence was that no such allowance was paid. I accept that evidence.

[40] The company accepts that breakfast allowance payments were made for a period between 2005 and 2009, but says that this was a mistake which was remedied as soon as it came to the company's notice. I accept that some breakfast allowance payments were made during this period, and that that arose out of a misunderstanding by a new manager. I also accept that the defendant took steps to immediately address the situation as soon as it became known.

[41] Mr Craig's evidence of a spike in allowance payments from 2005 to 2009 reflects that breakfast allowance payments were made during this period. He suggested that this was consistent with the allowance not being paid prior to that date. Mr Nicholson took issue with this and made the point that there had been a recruitment drive during this period and that an increase in pilot numbers would inevitably lead to an increase in allowances being paid. An additional criticism was also levelled at the figures contained in Mr Craig's analysis, namely that they did not identify the precise circumstances in which a breakfast allowance had been paid.

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[12] New Zealand Air Line Pilots' Association Inc "CEC Update Newsletter" (Issue 4, 6 July 1998) at 3.

[42] While the factors referred to by Mr Nicholson may have had some impact, the upswing in allowances being paid in 2005 to 2009 is notable, particularly in light of the down-turn in numbers following steps taken by Air New Zealand in 2009 to stop the allowance payments being made.

[43] Reference was made to provisions in another collective agreement to which the defendant is party – the FANZP agreement. It is said that the Federation of Air New Zealand Pilots accepts that in the circumstances at issue in the present case (a pilot commencing duties from home base where the flight duty is planned to be 11 hours or less) no entitlement to a breakfast meal, or an allowance in lieu, arises. I do not consider that assistance can be drawn from a non-party's view of formulations contained in a different agreement, involving a different party, which arose out of different negotiations.

[44] The breakfast exception, which survived negotiations for the 1992 agreement in a limited form, is reflected in s 10.3.3.1.2. I do not accept the plaintiff's argument that there is no rationale for the existence of s 10.3.3.1.7 on the defendant's interpretation. It is clear that the provision was inserted following negotiations between the parties to address the situation that arose following the Employment Court's judgment in *Bachop*. The then Chief Judge had declined to accept ALPA's argument that pilots were entitled to a meal and an allowance in flight, but declined to make a declaration given the collective had, by that stage, expired. He observed that the position would be one that could be the subject of negotiations for the new collective.[13] That is precisely what the parties did. It is clear on the evidence that ALPA negotiated for an effective reversal of *Bachop* and that it was successful in this regard. I accept Mr Hancock's evidence that s 10.3.3.1.7 was the result, and was squarely directed at ensuring that a pilot would be entitled to both a meal (of a certain quality) and an allowance in flight.

[45] I accept too that there was no intention on behalf of the parties to create a new entitlement – rather it was simply to address the *Bachop* outcome. This is consistent with the contemporaneous documentary evidence before the Court, none

[13] At 222.

of which refers to a breakfast allowance. Rather, the focus was squarely on the provision of lunch and dinner, and allowance claims for those meals.

[46] The evidence reinforces the submission that the breakfast allowance was not the subject of negotiation in the 1999 collective negotiations, was not paid between 1999 and 2005, but was paid between 2005 and 2009, and that payment stopped abruptly at that time.

[47] This leads conveniently to the plaintiff's submission that Air New Zealand's post contractual conduct in making payment of the allowance is relevant and, further, that it is now estopped from claiming that the allowance is not payable.

[48] In *Gibbons Holdings Ltd v Wholesale Distributors Ltd*[14] Tipping J observed that:[15]

> ... it is now appropriate to allow the traditional date of assessment to come forward to the date of hearing so as to enable the court to take into account how the parties have behaved in the performance of their contractual obligations and in the administration of their contract generally. The focus must still be on objective conduct rather than expressions of subjective intention or understanding. But if the parties have together conducted themselves in the performance of their contract in a way that is relevant to the meaning of the disputed provision, the court should be able to take that into account.

And that:[16]

> Properly focused and limited evidence of post-contract conduct will often be capable of shedding more light on contractual meaning than a lot of the pre-contractual material which is said to bear on that meaning. Post-contract evidence that logically indicates that at the time they contracted the parties attached a particular meaning to the words in dispute can be good evidence that a later attempt by one party to place a different meaning on those words is unpersuasive.

[49] The evidence established that some breakfast allowances were paid between 2005 and 2009 but not earlier. It follows that little assistance can be drawn from the post contractual (from 1999) conduct to bolster the plaintiff's claim.

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[14] [2007] NZSC 37, [2008] 1 NZLR 277.
[15] At [60].
[16] At [62].

[50] As McGrath J pointed out in *Vector Gas*:[17]

> The essence of estoppel by convention and its distinguishing characteristic is that there is mutual assent or a common assumption as to the relevant fact:
>
> > ... both parties are thinking the same; they both know that the other is thinking the same and each expressly or implicitly agrees that the basis of their thinking shall be the basis of the contract.
>
> The effect of the estoppel is to prevent a party from going back on the mutual assumption if it would be unjust to allow him to do so.

[51] I accept that a mistake was made in relation to payments of the allowance over a period of time but that this was corrected as soon as it came to light. The company's evidence on this point was consistent with the extrinsic material, referred to above. A mistake that leads to the payment of an allowance does not amount to either a mutual assent, or common assumption. Indeed, the lack of action by ALPA between 1999 and 2005 to secure payment of an allowance it says its members were entitled to, suggests a mutual understanding that breakfast allowances were not payable.

[52] Nor do I accept the plaintiff's submission that Air New Zealand's "failure" to take any action to recover the allowances that it now says it ought not to have paid provides support for the position being advanced on ALPA's behalf. It is clear that in 2010 the current proceedings were instituted in the Employment Relations Authority, following Air New Zealand's move to stop all payments of the allowance, and that the company simply decided to leave issues relating to recoverability or otherwise until after these proceedings had been concluded.

**Result**

[53] The plaintiff's claim is dismissed. Properly interpreted, the agreement between the parties does not give rise to an entitlement to a breakfast meal allowance under s 10.3.3 where a pilot is departing from home base with a flight duty planned, prior to report, to be 11 hours or less and where the duty includes the breakfast band (0630 to 0730). There is no contractual entitlement to a breakfast allowance in such circumstances.

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[17] At [68], [69].

[54] If any issue of costs arises, it can be the subject of an exchange of memoranda, with the defendant filing any memorandum within 30 days of the date of this judgment and the plaintiff filing within a further 30 days.

Christina Inglis
Judge

Judgment signed at 1pm on 8 June 2012