

**IN THE EMPLOYMENT COURT  
AUCKLAND**

**[2015] NZEmpC 183  
EMPC 56/2015**

IN THE MATTER OF      an application for a compliance order

BETWEEN                NEW ZEALAND AIR LINE PILOTS'  
ASSOCIATION INCORPORATED  
Plaintiff

AND                        AIR NEW ZEALAND LIMITED  
Defendant

**ARC 6/14**

IN THE MATTER OF      an application for stay of proceedings and  
execution

AND BETWEEN        AIR NEW ZEALAND LIMITED  
Plaintiff

AND                        NEW ZEALAND AIR LINE PILOTS'  
ASSOCIATION INCORPORATED  
Defendant

Hearing:                by joint memorandum filed on 15 October 2015

Appearances:        RE Harrison QC and R McCabe, counsel for NZALPA  
PA Caisley, counsel for Air New Zealand Limited

Judgment:            16 October 2015

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**INTERLOCUTORY JUDGMENT (NO 2) OF CHIEF JUDGE G L COLGAN**

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[1]      This interlocutory judgment varies, by consent, the interlocutory judgment of the Court delivered on 26 May 2015.<sup>1</sup>

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<sup>1</sup> *New Zealand Air Line Pilots' Association Inc v Air New Zealand Ltd* [2015] NZEmpC 75.

[2] It will be clearer if the Court, in effect, sets aside and reissues the interlocutory judgment of 26 May 2015 but containing those variations and I do so as follows.

- a. Air New Zealand Limited undertakes to prosecute its appeal to the Court of Appeal with expedition.
- b. On or before 8 October 2015, Air New Zealand Limited will calculate and pay back-pay (for the period 24 April 2013 – 20 September 2015) to those employees who are or were, at any material time:
  - i. B737 type First Officers and all Second Officers;
  - ii. Members of NZALPA; and
  - iii. Covered by the terms of the Employment Court Judgment dated 11 September 2014 in this matter.

Back-pay will be calculated at the rates set out in Schedule 1.

- c. In making the appropriate back-pay payments as referred to above, Air New Zealand shall also make a “*special allowance*” payment to each pilot to whom it makes a back-pay payment.
  - i. For the purpose of calculating the special allowance payment, the total amount of back-pay for each pilot will be deemed to have been earned in equal instalments over each pay period for which the back-pay payment is applicable. The special allowance calculation will then be based on five per cent compound interest from the date of assumed earning, through to the date of payment.
  - ii. The back-pay amount to be used for this calculation is the total gross back-pay amount, less PAYE (ie the net payment).

- iii. The special allowance will be paid on or before 22 October 2015 and will be paid in addition to the back-pay owing.
  - iv. The special allowance payment will not be included in gross earnings for the purpose of calculating leave under the Holidays Act 2003, as it is not a payment that Air New Zealand Limited is required to make under the NZALPA – Air New Zealand collective employment agreement 2012 – 2015 (“collective agreement”), and thus falls outside the definition of gross earnings.
- d. With effect from 21 September 2015 Air New Zealand will interpret and apply the collective agreement in a manner consistent with the Employment Court’s Judgment dated 11 September 2014. To this end, it will commence paying the 737 type First Officers and all Second Officers at the rates set out in Schedule Two.
- e. Air New Zealand will continue to pursue its appeal to the Court of Appeal as it considers there to be an ongoing live issue as to the interpretation and application of cl 24.2 of the collective agreement. In the event that Air New Zealand is successful in its appeal to the Court of Appeal, it will not seek repayment of the back-pay payments, the special allowance payments or in the increased pay-rate payments referred to in sub-paragraphs b – d above.
- f. Air New Zealand will not seek changes to any current terms and conditions contained within the collective agreement in return for paying the increased pay rates or making the back-pay payments or the special allowance payments referred to in sub-paragraphs b – d above.
- g. NZALPA will work with Air New Zealand using an interest based process to establish contractual language that allows for the scheduling of simulator training beyond what is permitted in the

current collective agreement. This language will be achieved via a variation to the collective agreement or via a letter of agreement to include such language in bargaining for a new collective agreement (subject to ratification). This language will at least match the language regarding the scheduling of simulator training in the FANZP – Air New Zealand collective agreement 2012 – 2015.

[3] The foregoing undertakings and terms of settlement may be varied by the parties by mutual agreement.

[4] The parties have agreed to bear their own costs in relation to these applications for compliance order and stay of execution.

GL Colgan  
Chief Judge

Judgment signed at 1 pm on Friday 16 October 2015