IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND

[2011] NZERA Auckland 244
5325975

	BETWEEN	NEW ZEALAND AIR LINE PILOTS' ASSOCIATION INC Applicant
	AND	AIR NEW ZEALAND LIMITED Respondent

Member of Authority:	Robin Arthur
Representatives:	Richard McCabe, counsel for Applicant Kevin Thompson, counsel for Respondent
Investigation Meeting:	8 June 2011
Determination:	9 June 2011

DETERMINATION OF THE AUTHORITY

A. This matter, involving a dispute as to whether the terms of a collective employment agreement between the parties entitle pilots to payment of a breakfast allowance in certain circumstances, is removed under s178 of the Employment Relations Act 2000 for the Employment Court to hear and determine without first being investigated by the Authority.

Employment Relationship Problem

[1] The New Zealand Air Line Pilots Association Incorporated (ALPA) sought a declaration about the interpretation and application by Air New Zealand Limited (ANZL) of terms in their Pilots' Collective Employment Agreement (CEA) regarding payment of breakfast allowances. The terms in dispute are materially identical in the current CEA dated 6 August 2010 (the 2010 CEA) and its predecessor CEA dated 31 October 2008 (the 2008 CEA).

[2] ALPA claimed ANZL breached the agreement, from about July 2009, by not paying the breakfast allowance to pilots in two pilot crews whose planned flight duty were for less than 11 hours. ALPA sought orders requiring ANZL to pay the allowance in future and to provide back pay to those pilots previously denied it.

[3] ANZL replied that, properly interpreted and applied, the CEA did not provide for the allowance to be paid to pilots in the circumstances identified because there was no requirement for pilots to be provided with a breakfast meal and, therefore, ANZL was not required to pay an allowance in substitution for it. It acknowledged some breakfast allowances were paid in those circumstances between 2004 and 2009 but stated this was an error and ANZL would be entitled to recover those payments.

[4] The parties were not able to resolve the dispute in mediation or, prior to that, through the process provided in the CEA for discussion between ANZL and ALPA's Contract Management Group (CMG). The CMG comprises pilots nominated to monitor and make recommendations about administration of crew accommodation, meals, travel and other matters.

Order for removal

[5] At the opening of the investigation meeting I raised with counsel whether the nature of this matter was such that it would best be removed to the Court. Following amendments to the Employment Relations Act 2000 (the Act), effective from 1 April 2011, s.178 permits the Authority to order removal on its own motion.

[6] Following a helpful discussion the parties agreed removal was appropriate given the particular circumstances and nature of the matter for determination and accepted the Authority doing so on its own motion rather than having one or both parties prepare an application.

[7] With that in mind, and for the reasons given below, I order this matter to be removed in its entirety to the Employment Court to hear and determine without the Authority investigating it.

An important question of law

[8] Having reviewed the parties' statements, witness statements lodged in preparation for an investigation meeting and background documents provided by the parties, I am satisfied this matter involves an important question of law likely to arise other than incidentally. How the relevant terms of the CEA are interpreted will be decisive as to whether ANZL is or is not required to pay a breakfast allowance to pilots in the specific identified circumstances of working from their home base in a two pilot crew on a planned flight duty of less than 11 hours.

[9] I have not set out the full wording of all the relevant CEA terms meal provision and allowance entitlements. To do so would need some explanation of how they should or may be read together – which is really the interpretation dispute – and would require some commentary on the relative merits of each party's arguments. That is now best left for Court. It is enough to note four key clauses: a general term on meals and allowances (clause 10.3.1.1), a term on providing breakfast where specified breakfast hours fall within a duty period (clause (10.3.3.1.1), a term on not providing breakfast in certain circumstances (clause 10.3.3.1.2) and a term requiring allowances to be paid for all two pilot flights (clause 10.3.3.1.7):

> *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 from time to time between the Company and the Contract Management Group.*
> …
> *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*
> …
> *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.*
> …
> *10.3.3.1.7 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 fight duties. …*

[10] A question of law arising in a matter need not be controversial, novel or particularly difficult in order to be important in the sense required by the Act.

[11] Some aspects of interpretation of the particular terms in the CEA are not novel because the same or very similar clauses in a previous collective contract between these parties have been the subject of judicial scrutiny: *Bachop v Air New Zealand Limited* [1998] 2 ERNZ 214. In that case the Court reached firm conclusions (at 220) on how general obligations in some clauses should give way to particular obligations. Its interpretation was reached by discerning intention based on what was logically possible to attribute to the parties and reading the clauses in their immediate context and the wider context of the entirety of the contract.

[12] However in the present case, the appropriate approach to interpreting the terms is at issue, which is itself an important question of law. ALPA's case is based on more than a plain reading of the present CEA terms. It contends correct construction of those terms requires an analysis of terms agreed in its collective contracts and agreements with ANZL at least as far back as 1999 and perhaps earlier. Either approach could lead to a different outcome and, therefore, the scope or method of interpretation could be decisive.

Authority's opinion of the circumstances

[13] In discussion counsel agreed that if the Authority proceeded to investigate and determine this particular matter, a challenge from one or other party was all but inevitable. In light of the parties' general litigation history and the importance to them of the particular issue regarding the breakfast allowance, I accept counsels' assessment was measured and realistic. Accordingly I consider an Authority determination would not really assist the parties resolve their problem. Rather, as a matter of efficiency for the employment institutions and the parties, I was satisfied all the circumstances supported removal of this matter to the Court.

Robin Arthur
Member of the Employment Relations Authority