

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
CHRISTCHURCH OFFICE**

[2013] NZERA Christchurch 211  
5416557

BETWEEN            NEW ZEALAND AIRLINE  
                         PILOTS' ASSOCIATION  
                         INCORPORATED  
                         Applicant

AND                    MOUNT COOK AIRLINES  
                         LIMITED  
                         Respondent

Member of Authority:    M B Loftus

Representatives:        Richard McCabe, Counsel for Applicant  
                         David France, Counsel for Respondent

Investigation Meeting:    9 July 2013 at Christchurch

Submissions received:    At the investigation meeting

Determination:            9 October 2013

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**DETERMINATION OF THE AUTHORITY**

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**Employment relationship problem**

[1]    This is an application for an injunction restraining Mount Cook Airlines Limited (Mt Cook) from using a recently implemented rostering system which the applicant, New Zealand Airline Pilots' Association Incorporated (NZALPA), says will breach the parties' collective employment agreement (CEA).

[2]    Mt Cook claims the proposed system is compliant with the CEA.

**Background**

[3]    Mt Cook and NZALPA are parties to a CEA that came into force on 11 October 2012.

[4] The CEA says:

*The company shall be entitled to require its pilots to report for duty and to perform flying and other duties in connection with the operation of the company aircraft at any time and from time to time, whether by day or night, and whether before 8am or after 5pm on any day, without payment of any monies in respect of overtime, shift work, penal rates and so forth other than those prescribed in this agreement*

...

[5] The above right is then tempered by various provisions. One of those, imported from previous documents and unchanged for some time, reads:

*4.2 Requests for a specified day or days free of duty shall be granted wherever possible. Each such request granted forfeits the pilot's right to a duty free period for that roster being given in two consecutive days as provided in subclause 4.1. Where such requests are granted the pilot may nominate up to two of the days so granted as inviolable and, where rostering permits, they shall be shown on the roster as such.*

[6] The system used until recently saw rosters developed by a computer programme known as Geneva. One of the components used to then populate the roster is a book in which pilots manually note requests for specific days off. Similarly pilots could request specific overnight duties, early or late starts etc, and requests were often facilitated by direct discussion between rostering staff and pilots.

[7] The version of Geneva being used by Mt Cook was an old one and advice was received that it would no longer receive provider support. That left Mt Cook in need of a replacement and it considered two options. The first was to transit to a newer version of Geneva at considerable cost. The second was to adopt the system its parent company, Air New Zealand, uses for its jet pilots. Mt Cook took the latter option as the cost would be minor.

[8] The new system sees pilots notify roster requests electronically. Bids are processed via a points based system under which pilots are given 100 points per roster. These may be used for any request such as days off, overnights or specific duties and the importance of the bid is signified by the number of points allocated to it. Success is then determined by an algorithm which considers the size of the bid and previous approval levels.

[9] NZALPA's contention is the new system will result in pilots being unable to achieve the current level of request satisfaction. That implies Mt Cook will no longer be granting requests *wherever possible* and in breach of the collective. This contention is based on the pilots understanding of the system and anecdotal evidence from cabin crew who have been using the new system for approximately a year.

[10] Mt Cook contends the proposed system complies with the collective.

### **Determination**

[11] This is, as already said, an application Mt Cook be prevented from continuing to use the new rostering system. The relief sought by NZALPA (see paragraphs 3.1 and 3.2 of the statement of problem dated 11 April 2013) is:

- a. A determination that Mt Cook's proposed electronic bidding system is in breach of clause 4.2 of the CEA.
- b. An order that Mt Cook is not entitled to implement its proposed electronic bidding system.

[12] The relief reflects NZALPA's primary assertion the new system is in breach of clause 4.2 of the collective agreement in that it introduces a situation in which leave requests will no longer be granted *wherever possible*. There is a secondary argument the change was introduced without the required consultation.

[13] The evidence in support of the claim came from two pilots.

[14] The first witness said it was rare and unusual for leave requests to be denied and spoke of only two instances upon which she had suffered this (with both predating the new systems introduction). She does, however, have a practice of applying for the same two days off each week and was fearful the new system would not allow this to continue. She referred to four bids she placed for the first fortnight of the new system and her understanding two of those had been rejected by the algorithm. That said, they were granted on the published roster and she *assumes* there were subsequent manual changes.

[15] She refers to her impression cabin crew are upset and unhappy with the new system which was applied to them some time ago but accepted, when answering

questions, she has no direct evidence her fears are founded and her leave requests will no longer be granted wherever possible.

[16] The second witness could only cite one occasion upon which a specific leave request had not been granted. He did not ask why and cannot say whether or not the decision was unreasonable or contrary to the collective requirements. Indeed, he suggested it as not by referring to the introduction of a new aircraft type and rostering restrictions resulting from the training requirements that imposed.

[17] The rest of his evidence was little more than speculative. He spoke of how he *anticipated* the changes would affect him and his *worry* the situation would change. He supported this with reference to anecdotal evidence from colleagues both within and beyond Mt Cook without giving detail.

[18] As already said NZALPA seeks an order Mt Cook be precluded from implementing the electronic bidding system on the grounds it breaches clause 4.2 of the collective. There is, however, absolutely no evidence the system is in breach of the collective. Both witnesses speak of fear and speculation but both concede there is no concrete evidence Mt Cook has, or will, fail to grant leave requests whenever possible. For that reasons alone the claim must fail.

[19] If that were not enough there is the evidence of Mt Cook's witnesses. They described in some detail how the system worked and the fact it emphasises satisfying pilot requests over the fair distribution of work (always provided regulatory restrictions on pilot deployment and company imperatives such as training are satisfied). There was also evidence manual intervention remains possible, as do other ways of ensuring pilot satisfaction such as Mt Cook accepting privately arranged roster swaps. In other words previously accepted processes for ensuring a high level of request satisfaction remain.

[20] I conclude the claim the new system will breach clause 4.2 is, given the evidence or, more correctly, the lack there-of, completely unsustainable.

[21] There is then the secondary approach and that is the change was not preceded by the required consultation in that it was not discussed in CEA negotiations prior to its introduction. This approach is also unsustainable. It was not pleaded and neither of the applicants' witnesses gave any evidence in support of the approach. They could not as neither participated in collective bargaining. If that was not enough,

Mt Cook's witnesses gave undisturbed evidence the issue was discussed in bargaining and there is documentary evidence of other discussion and consultation.

[22] For the above reasons, the application Mt Cook be restrained from using the electronic roster system fails.

[23] Costs are reserved.

M B Loftus

Member of the Employment Relations Authority