

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

**I TE RATONGA AHUMANA TAIMAHI  
TĀMAKI MAKĀURAU ROHE**

[2024] NZERA 251  
3229379

BETWEEN	A LABOUR INSPECTOR Applicant
AND	AIRWAYS CORPORATION OF NEW ZEALAND LIMITED First Respondent
AND	AIRWAYS INTERNATIONAL LIMITED Second Respondent

Member of Authority:	Robin Arthur
Representatives:	Greg La Hood, counsel for the Applicant Geoff Davenport, counsel for the Respondents
Investigation:	On the papers
Determination:	2 May 2024

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**CONSENT DETERMINATION OF THE AUTHORITY**

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[1] A Labour Inspector issued proceedings in the Employment Court seeking a declaration of employment status under s 6 of the Employment Relations Act 2000 (the Act) in respect of David Ayre and Jamin Baker while they were undertaking the Air Traffic Control (ATC) training programme. The Inspector also commenced associated arrears proceedings in the Employment Relations Authority.

[2] By joint memorandum the parties have advised the Authority they have reached agreement on all issues between them in both proceedings. Matters relating to the court proceedings are addressed in a consent order issued by the court.

[3] As regards the Authority proceedings, the parties have agreed that:

- (i) Mr Ayre and Mr Baker were in an employment relationship with the respondents for Part Two of the ATC training programme and the Inspector agrees to withdraw the Employment Court proceedings and the Authority proceedings in respect of Part One of the ATC training programme.
- (ii) In respect of Part Two of the ATC training programme (OJT), the relationship between the respondents and persons undertaking Part Two of the programme will be treated as one of employment from the date of the next intake of participants (which is scheduled on or around 19 August 2024).
- (iii) Applicable arrears will be calculated and paid for minimum wage, annual leave pay, public holiday pay and alternative holiday pay, as follows:
  - (a) For Mr Baker and Mr Ayer, for Part Two of the ATC Training programme (OJT), where applicable in each instance, for the six years back from 12 May 2023;
  - (b) For other participants on the Part Two of the ATC Training programme (OJT), where applicable in each instance, for the six years back from 22 February 2024;
  - (c) For the participants on Part Two of the ATC training programme (OJT) between 22 February 2024 and the date on which the course participant completes Part Two or the date of the transition referred to in paragraph 3(ii) above occurs (whichever is the earlier).
- (iv) Given the agreement reached in paragraphs (i)-(iii) above, the Inspector shall forthwith withdraw the Authority proceedings in their entirety, on the basis that costs will lie where they fall.

[4] By consent and by this determination, the terms agreed between the parties are now the orders of the Authority in resolution of this matter.

Robin Arthur  
Member of the Employment Relations Authority