

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

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

[2024] NZERA 458
3228221

BETWEEN	FLIGHT ATTENDANTS' ASSOCIATION OF NEW ZEALAND Applicant
AND	AIR NEW ZEALAND LIMITED Respondent

Member of Authority:	Robin Arthur
Representatives:	Simon Mitchell KC, counsel for the Applicant Scott Worthy, counsel for the Respondent
Investigation Meeting:	15 May 2024
Determination:	29 July 2024

DETERMINATION OF THE AUTHORITY

Employment relationship problem

[1] The Flight Attendants Association of New Zealand (FAA) sought a determination of a dispute with Air New Zealand Limited (Air NZ) about the meaning of a term in an agreement between the union and the company.

[2] FAA said a clause in a Strategic Partnership Memorandum of Understanding (SPMoU), agreed with Air NZ in 2020, required the company to pay for a free breakfast for its members staying at hotels while on duty overseas as cabin crew on the airline's wide-body B787 and B777 aircraft. FAA said Air NZ had breached their agreement by providing its members with free breakfasts at only some of those hotels, by extending this provision at those hotels to cabin crew who were members of another union or not members of any union, and by advising that no free breakfasts would be provided in hotels at new destinations added to Air NZ routes.

[3] FAA said Air NZ's actions breached both the SPMoU and the collective agreement (the CA) between the union and the company as well as breaching various statutory obligations. Those obligations include the duty of good faith and the restriction on 'passing on' terms agreed with members of one union to members of another union, if doing so is intended to undermine collective bargaining.

[4] It said Air NZ had 'passed on' access to free of charge breakfast to members of that other union in the incorrect belief that free breakfasts could be a benefit that was an unlawful preference to FAA members.

[5] Air NZ denied there was any term of employment saying it must provide free breakfasts. It said the company had complied with an undertaking given in the SPMoU to do its best to get overseas hotels to provide FAA members with a 'free of charge' (FOC) breakfasts. It said FOC, in this context, meant at no cost to the airline as well as no cost to the FAA members. It said FOC breakfasts, where arranged, were later provided to all cabin crew, regardless of union membership, as a matter of fair treatment between all Air NZ flight attendants.

[6] Air NZ said it had decided no free breakfasts would be provided at any new hotel locations after finding out the airline was being charged an additional cost for breakfasts at some of the existing locations. It said the airline had never intended or agreed to incur additional costs. It has agreed to keep providing the breakfast, at its cost, at ten existing locations while a review of its allowance structure is carried out.

The Authority's investigation

[7] For the Authority's investigation written witness statements were lodged from:

- Craig Featherby, FAA's president who works as an inflight service manager;
- Christina Kennedy, an Air NZ general manager who was one of the company's bargaining team for its 2020 CA with FAA;
- Sally Spry, an Air NZ human resources business partner who was one of the company's bargaining team for its 2022 CA with FAA; and
- Sarah Murray, an Air NZ cabin crew senior manager who led the company's bargaining team for its 2022 CA with FAA.

[8] Each witness attended the investigation meeting and, under affirmation, answered questions from me and the parties' representatives. The representatives also gave oral closing submissions, speaking to written synopses.

[9] As permitted by s 174E of the Employment Relations Act 2000 (the Act) this determination has stated findings of fact and law and expressed conclusions on issues necessary to dispose of the matter. It has not recorded all the detailed evidence and submissions received.

The agreements and clauses in issue

[10] FAA was founded during the initial stages of the Covid-19 pandemic by flight attendants dissatisfied with their existing union, E tū, and how redundancies resulting from the pandemic were decided and applied to different groups of members.¹

[11] FAA had around 87 members at the time. It currently has more than 840 members who fly internationally on Air NZ's wide-body aircraft. Around 600 other cabin crew working on those aircraft were said to be members of E tū.

[12] On its formation FAA began bargaining for a CA. This resulted in two agreements – the 2020 CA and the SPMoU.

[13] Shortly after the CA was ratified in November 2020 all FAA members were laid off through redundancy processes implemented due to the pandemic restrictions and international decline in air travel. Some FAA members, including Mr Featherby, were later rehired as the restrictions eased in the following months and the numbers of international flights and passengers were gradually restored.

[14] Mr Featherby said their CA was negotiated with the intention of assisting Air NZ, once rehiring began, with more flexible crewing and lower costs for its long range flights on the wide-body aircraft. He described the CA as reducing per head costs for cabin crew to around 40 per cent below pre-Covid levels and enabling Air NZ to save around \$60M in direct labour costs over previous terms and conditions.

¹ For context, see *E tū v Air New Zealand Limited* [2020] NZERA 398.

[15] The SPMoU, also agreed during this bargaining, set out the parties' plans for negotiating three two-year-long collective agreements over a six-year period. Clause 2.1 of the SPMoU said:

Air NZ and FAA (together, the "Parties") wish to have a stable and co-operative relationship to provide for sustainable growth and provide benefits for Air NZ, FAANZ and FAANZ's members for a six-year period from 26 November 2020 to 25 November 2026 ("term of memorandum").

[16] Other clauses included a 'strategic partnership framework' for the parties to "build a strong and collaborative relationship" and a commitment from Air NZ not to undermine FAA or its members, including by promoting or favouring "another flight attendant group" over the FAA group. The parties also committed to using interest-based problem-solving processes to resolve disputes between them. Where a dispute about "interpretation ... or an alleged contravention of the [SPMoU]" could not be solved in mediation, they agreed the parties may apply to the Authority.

[17] The SPMoU was similar in nature and effect to a High Performance Engagement Charter that the other airline unions and Air NZ had agreed in 2015, before FAA was set up.

[18] As well as its declared commitments to collective bargaining and a collaborative approach to resolving disputes, the SPMoU listed "initiatives" on 12 topics that the parties committed to working together on during its six-year term.

[19] Those initiatives included the following two:

- (a) as part of any hotel contract negotiations or new hotel agreements Air NZ intends to obtain the inclusion of FOC breakfasts.
- ...
- (h) if hotel costs are reduced through Air NZ negotiations, exploration of sharing those hotel savings with Flight Attendants
- ...

[20] A PowerPoint presentation prepared for meetings of FAA members held in November 2020 to ratify the 2020 CA included two references to FOC breakfasts. A page headed Strategic Partnership Initiatives listed "FOC breakfasts as part of re-negotiation of hotel contracts" as something that was to occur during the term of the memorandum. A Q&A section of the presentation included the following explanation of those two listed initiatives:

Question 10: What does FOC breakfast mean?

FOC is Free of Charge Breakfast. The company will endeavour to negotiate this as part of any hotel renegotiations.

Question 11: What does sharing accommodation savings mean?

This is still to be determined but the concept was when Air NZ re-negotiates hotels, if we agree to a hotel that still meets our requirements e.g. provides the ability for good rest and delivers savings, the savings (could be a % of the savings) could be reinvested back into the FAANZ Cabin Crew members.

[21] The clauses of the 2020 CA, which FAA members voted to ratify, made no reference to a free breakfast. The CA had an introductory explanatory section which included the following description of the Strategic Partnership:

Air New Zealand and FAANZ wish to have a stable and cooperative relationship to provide benefits to members for a six-year period from November 2020 until November 2026. The purpose of the strategic partnership is to provide benefits for Air New Zealand, FAANZ and FAANZ's members.

... The strategic partnership arrangements sit outside the terms of the collective as it is an agreement between FAANZ and Air New Zealand. If you want to know more about the strategic partnership and that (sic) benefits that brings to you, please ask.

[22] The 2022 CA introductory explanatory section repeated the same paragraphs about the strategic partnership. The terms of settlement for that CA included the following description of how the SPMoU had operated since 2020:

...

c) The parties agree that prior to the date of this [2022] Collective Agreement the Strategic Partnership has enabled them to work together to realise changes in the following areas:

i) Obtaining the inclusion of free of charge breakfasts as part of any hotel contract negotiations or new hotel arrangements.

ii) ...

The parties agree that, through the Strategic Partnership, the above initiatives have enabled the parties to obtain meaningful benefits for cabin crew, and for the airline.

[23] Again, as with the 2020 CA, the actual clauses of the 2022 CA made no reference to FOC breakfasts.

[24] As Mr Featherby explained in his evidence, FAA members had been keen to get FOC breakfasts provided at the hotels where they stayed during stopovers because this

would leave more of their daily expenses allowance to pay for better lunches and dinners.

[25] Discussion of the prospect of negotiating FOC breakfasts with hotels arose during the 2020 collective bargaining because of an example of a hotel in Los Angeles where such an arrangement had recently been reached at that time. The agreement in that case reduced the total hotel cost to Air NZ as well as providing, as part of that lower cost, a breakfast for flight attendants for which they were not charged.

[26] Air NZ anticipated being able to negotiate similar better-priced contracts, including a free breakfast for FAA members, in other destinations because hotels were under pressure to keep and rebuild guest numbers badly depleted during the pandemic.

[27] According to Mr Featherby, Air NZ representatives assured FAA during the 2020 negotiations that the FOC breakfast would only be provided to its members, not all flight attendants and, specifically, not to those who were E tū members.

[28] Limiting this provision to FAA members was seen as some acknowledgement to them for their cooperation in agreeing to more flexible working conditions than those E tū had negotiated.

[29] Mr Featherby said the intention to limit this provision to FAA members was the reason that the only reference to FOC breakfasts was in the SPMoU and was not included as a clause in FAA's CA with Air NZ. He said FAA was assured putting this arrangement only in the SPMoU meant it could not be passed on to "the other union".

[30] He said this assurance was repeated by Ms Spry during bargaining for the 2022 CA. Ms Spry denied that description. She said a FAA representative had referred at the end of that bargaining to free breakfasts not being part of the CA but had done so in response to a comment from another FAA representative. Ms Spry said she had only agreed with that comment, nothing more.

[31] In 2022 there were two developments in relation to free breakfasts that were, by that time, being provided to FAA members in the hotels they stayed in at around ten overseas destinations.

[32] Firstly, FAA became aware in mid-2022 of some instances where other Air NZ cabin crew were getting free breakfasts at those hotels. This, however, appeared to have

happened because some hotel staff had not understood the arrangement for FAA members, rather than being something requested or approved by Air NZ.

[33] Secondly, E tū raised concerns with Air NZ management about why its flight attendant members working overseas on those flights did not get the same provision.

[34] In November 2022 E tū officially notified Air NZ of a dispute over the issue saying their members were disadvantaged and asking that they be “provided with the FOC breakfast with immediate effect”.

[35] E tū said Air NZ had referred to equal and fair treatment of all crew as a reason for seeking “matching” or “aligned” terms in their separate collective agreements for FAA and E tū members but, through the SPMoU, Air NZ had provided something more to FAA members. E tū said this showed favouritism and undermined its membership. It said providing an additional fringe benefit of a free breakfast to one union group but not another unlawfully conferred a “preference” based on union membership and disadvantaged E tū members.

[36] In early December E tū provided Air NZ with a copy of draft legal proceedings alleging discrimination on the grounds of union membership. The draft proceedings said all E tū members in this area had a personal grievance for discrimination as they were denied the free breakfast unless they left E tū and joined another union.

[37] In light of E tū concerns, and some feedback in staff surveys, Air NZ reviewed its provision of FOC breakfasts.

[38] In a December 2022 email to FAA Ms Murray advised that Air NZ’s review had discovered the breakfast provided to FAA members was not free of charge to the company. She said Air NZ was being charged between \$25 and \$60 per crew member, per breakfast, with an annual cost of around \$1M. She noted this cost would continue to rise as the frequency of flights to ports where breakfast was provided increased.

[39] The hotel contracts had been negotiated for Air NZ by a third party provider and dealt with elsewhere in Air NZ’s management structure. It was not until early December that Ms Murray learned of what Air NZ’s submissions called “an internal miscommunication” that had resulted in those hotel contracts not meeting the

company's intention of the breakfast cost being covered by the hotel rather than being an additional charge to the airline.

[40] Ms Murray's message to FAA in December said the breakfast provision was intended to be "cost neutral (or free of charge)" but this had not been achieved. She said Air NZ would review the benefit and, meanwhile, would also provide the breakfast to non-union crew and E tū members, except for a small group who had other 'grandparented' terms. She also advised that Air NZ would "not be able to provide breakfasts at any new hotels that we use until the review has been completed". She said Air NZ believed its approach was "fair to all crew, including maintaining the benefit for FAA crew, despite that breakfast comes at a cost to the airline beyond the scope of what was originally intended and agreed".

[41] FAA responded by saying that it saw that announcement as a breach of the terms of settlement of the 2022 CA, a breach of the SPMoU and a breach of good faith. It said the FOC breakfasts had been part of addressing more favourable treatment Air NZ gave to E tū members over FAA members.

[42] From 14 December 2022 Air NZ implemented its new policy allowing for free of charge breakfasts for all cabin crew staying in hotels at ten overseas ports. The small number of cabin crew who remained on an earlier 'grand-parented' allowance system were excluded from the new, general policy.

[43] Subsequent discussions did not resolve the difference of opinion and analysis between the parties, resulting in proceedings in the Authority to resolve their dispute.

The issues

[44] Not all issues initially raised by the parties' pleadings, evidence and submissions ultimately required determination. Issues for determination have been considered in answer to the following questions:

- (a) What was the nature and effect of the SPMoU as an agreement between Air NZ and FAA?
- (b) What principles apply to interpretation of the agreement?
- (c) What is the natural and ordinary meaning of the terms of the agreement?
- (d) Does the wider context in which the terms were agreed or applied change the interpretation?

- (e) Did the statutory prohibition against ‘passing on’ certain terms and conditions apply to these circumstances?
- (f) Were concerns about whether provision of free breakfasts might be an unlawful preference dealt with in good faith?

The nature of the SPMoU

[45] The nature of the SPMoU needed to be analysed as part of considering what effect its contents and their negotiation had on the obligations of the parties to one another and what obligations might arise from it for Air NZ to its employees who are FAA members. This included the potential effects under the statutory provisions about the duty of good faith, the prohibition on preference and the limits on ‘passing on’ of provisions in collective agreements or individual terms of employment.²

[46] The SPMoU is an agreement between Air NZ, a company, and FAA, a union. As accepted by the parties in their submissions, it is a contract between them. The 2020 CA and the 2022 CA expressly stated the strategic partnership arrangements sat “outside the terms of the collective as it is an agreement between FAANZ and Air New Zealand”.

[47] It is not an employment agreement as defined in s 5 of the Act because it is not “a contract for service” between an employer and employee.

[48] Neither is the SPMoU a collective agreement in its own right. While it met the s 5 definition of a collective agreement as an agreement binding on a union and an employer, it did not meet other criteria for the form and content of a collective agreement. It did not contain a coverage clause.³ It was agreed to be effective for six years, longer than the maximum of three years permitted for a collective agreement.⁴ It also, most importantly, did not require any form of ratification by FAA members before it was binding on FAA.⁵ A clause in the 2020 CA and 2022 CA expressly provided that the SPMoU could be amended by agreement between Air NZ and FAA and was not subject to the ratification process required for changes to the collective agreement. The terms of the SPMoU were, therefore, not terms which had to be directly agreed to by the members as employees, unlike a collective agreement.

² Employment Relations Act 2000, s 4, s 9, s 59B and s 59 C.

³ Employment Relations Act 2000, s 54(1).

⁴ Section 52(3)(c).

⁵ Section 51.

[49] While the SPMoU contemplated that the relationship of Air NZ and FAA could “provide benefits for ... FAA’s members”, as referred to in clause 2.1, this did not mean the terms of the SPMoU were additional terms of each individual members’ employment. This conclusion is drawn from considering who could seek to enforce terms of the SPMoU.

[50] While the union as a social entity comprises a combination of individual workers, a union as an incorporated society and registered under Part 4 of the Act is a separate legal entity. It is the union, not any individual member, who is a party to the SPMoU as a contract and has the right to seek performance or enforcement of its terms. In that respect the SPMoU differed from a collective agreement where an individual member is directly entitled to enforce its terms.⁶

[51] While the terms agreed in the SPMoU might result in some benefit or value to individual FAA members, this was different from what is contemplated in s 61 of the Act which allows for employees bound by a collective agreement to agree to additional terms and conditions of employment. The difference is that such additional terms must be “mutually agreed to by the employee and the employer”. As already noted, adoption of the SPMoU or changes to it did not require formal ratification by FAA members, unlike any variation to the collective agreements.

[52] Accordingly, while a FAA member might have a legitimate expectation that they would receive the benefit of a favourable term in that agreement between their union and Air NZ, such a benefit was not an additional, individual term of employment.

[53] The meaning of the terms of the SPMoU had to be considered in light of those conclusions about its nature.

Principles on interpretation

[54] The legal principles applied in interpreting contracts generally guide the interpretation of collective agreements and other agreements between parties to an employment relationship.⁷

⁶ Section 56.

⁷ *New Zealand Air Line Pilots’ Association Inc v Air New Zealand Ltd* [2017] NZSC 111 at [74]–[78].

[55] The proper approach, as explained by the Supreme Court, is an objective one:⁸

... the aim being to ascertain “the meaning which the document would convey to a reasonable person having all the background knowledge which would reasonably have been available to the parties in the situation in which they were at the time of the contract.” This objective meaning is taken to be that which the parties intended. While there is no conceptual limit on what can be regarded as “background”, it has to be background that a reasonable person would regard as relevant. Accordingly, the context provides by the contract as a whole and any relevant background informs meaning.

...

While context is a necessary element of the interpretive process and the focus is on interpreting the document rather than particular words, the text remains centrally important. If the language at issue, construed in the context of the contract as a whole, has an ordinary and natural meaning, that will be a powerful, albeit not conclusive, indicator of what the parties meant. But the wider context may point to some interpretation other than the most obvious one and may also assist in determining the meaning intended in cases of ambiguity or uncertainty. ...

[56] The Supreme Court has also emphasised the importance of the relational emphasis in the statutory context in which contractual rights and obligations are considered. This includes the principle of good faith, applying not only between employers and workers but also between employers and unions:⁹

... As its name suggests, the current [Employment Relations] Act takes a relational approach, insisting that employment is more than a market transaction theoretically conducted at arm’s length between individuals with equal bargaining power. The result is that while the employment agreement remains very important, it is the employment relationship that is the real focus under the current Act. The scope of the employment relationship is wider than the employment contract and it adds an additional dimension to contractual rights and obligations. This is reflected in two important ways.

The first is the statutory incorporation of the principle of good faith into the employment relationship. This principle underpins the Act’s relational approach.

...

Section 4 then provides that parties to an employment relationship “must deal with each other in good faith”. This means, of course, that parties must not mislead or deceive one another, but its effect is wider than that. Parties must also actively and constructively establish and maintain a productive employment relationship; they must be responsive and communicative; and employers must comply with procedural fairness requirements. Further, the obligation applies to bargaining; employer-employee consultations;

⁸ *Firm PI 1 Ltd v Zurich Australian Insurance Ltd* [2014] NZSC 147 at [60] and [63] (footnotes omitted).

⁹ *FMV v TZB* [2021] NZSC 102, [46]-[47] and [50]-[51] (footnotes omitted).

redundancies; and any proposal that might impact on employees, including proposals to contract work out, or to restructure or sell the employer's business. This list of applicable circumstances is inclusive. Parliament was at pains to ensure that the principle of good faith should be the driver of all employment relationships, independently of and in addition to obligations in the employment contract.

The second major reflection of the Act's relational approach is the definition of "employment relationship" itself. "Employment relationship" is defined to include not only that between employer and employee (that is, the parties to the employment contract), but also union and employer.

Ordinary and natural meaning of the text

[57] As submitted by Air NZ, the plain words used in the SPMoU about "FOC breakfasts" do not provide a commitment or guarantee FAA members would be provided with a free breakfast at all hotels they stayed in while away on a tour of duty or that, where a free breakfast was provided, it would be exclusively available to FAA members and not to any other Air NZ flight attendants.

[58] The word "intends" in the clause on FOC breakfasts, taking the ordinary and natural meaning of the words used, indicated a commitment by Air NZ to try and get free of charge breakfasts included in its agreements with hotels. It was a commitment of endeavour, not a guarantee of a particular outcome in every case.

[59] The ordinary and natural meaning of the words in the term do not, however, answer the question of whether the breakfast being sought in the hotel negotiations was intended to be free of charge to the airline as well as the FAA member.

Interpretation in context

[60] The uncertainty or ambiguity about the meaning of "FOC" as used in this particular agreement had to be resolved by considering the wider context in which the agreement was made and the SPMoU document as a whole, not solely the particular words about the breakfast initiative.

[61] Mr Featherby's evidence, of what he understood was promised in discussions with Air NZ representatives at the time of negotiating the SPMoU and CA in 2020, was that FOC referred only to whether there was any cost to the flight attendant, not to the airline.

[62] Ms Kennedy, in her recall of those discussions, was as firmly of the opposite understanding. She said Air NZ would not have entertained the idea of paying for the breakfast given its financial situation at the time.

[63] Four factors from the context favoured Ms Kennedy's description as more likely to be correct about the intended meaning.

[64] Firstly, the airline faced significant financial risks at the time. Its survival depended on substantial loans provided by the government. Large scale layoffs of staff were underway. It was highly unlikely Air NZ representatives would have agreed to increase costs by a commitment to spend more on cabin crew meals.

[65] Secondly, the negotiations with a Los Angeles hotel, raised as an example during negotiations of what could be achieved in the financial environment at that time, had resulted in the breakfast being provided at no cost to Air NZ as well as to the flight attendants. It was that outcome that was seen as being possible in negotiations with other hotels when the SPMoU was agreed.

[66] Thirdly, the emphasis on reducing costs was apparent in another initiative referred to along with seeking free breakfasts in hotel contract negotiations. Item (h) in that list referred to sharing savings with flight attendants "if hotel costs are reduced through Air NZ negotiations". This confirmed Air NZ's intention was to reduce its hotel costs, not add costs by paying for breakfasts.

[67] Fourthly, if the parties had intended and agreed Air NZ was to meet the costs of breakfasts, they would have included those words in the agreement.

[68] While "FOC" might have had some different meaning or application in a different context or time, the most likely intended meaning in the context when the SPMoU was agreed is that described by Air NZ. It meant an arrangement where the hotel met the cost of providing the breakfast so it was "free of charge" to both the airline and the flight attendant. It was an outcome realistically contemplated at the time although, as explained in Ms Murray's evidence, the negotiating landscape for hotel accommodation has now shifted strongly back in favour of the hotels as international travel has recovered following the pandemic.

[69] The evidence, assessed overall, did not support Mr Featherby's contention that Air NZ representatives had, in 2020 and 2022, given an unequivocal commitment that the breakfast would not or never be provided to other flight attendants who were not FAA members. There was no record or reference generated at the time and available in the evidence provided by the parties to corroborate his recall.

No breach of 'passing on' restrictions

[70] As acknowledged in FAA's submissions, its allegation that Air NZ had breached good faith obligations, by 'passing on' the free breakfast provision to other employees, was based on its argument that the terms of the SPMoU were incorporated into the CA. For reasons given earlier, that proposition has not been accepted in this determination.

[71] The commitment to a co-operative relationship and strategic partnership expressed in the SPMoU was intended to, among other things, provide "benefits" to FAA's members. Whatever resulted from the initiative to pursue FOC breakfasts in hotel contract negotiations may be described as such a benefit. This outcome, of some FAA members getting the benefit of not having to pay for their own breakfast, was not, however, incorporated as a term of employment in an individual employment agreement or a collective agreement for those FAA members. The extension of FOC breakfasts to all employees was not, therefore, a circumstance which fell to be examined as a potential breach of good faith under the provisions of s 59B or 59C of the Act about 'passing on' a term agreed in a collective agreement with the intended or actual effect of undermining bargaining for another, different collective agreement.

No unlawful preference

[72] The question of whether provision of a free breakfast to FAA members might have amounted to an unlawful preference was relevant to FAA's allegation that Air NZ failed to act in good faith through how the company responded to E tū's allegation.

[73] FAA's argument, simplified, was that Air NZ failed to properly analyse the merits of what E tū said and, rather, had overreacted by extending the breakfast provision to E tū members. In turn this was said to have formed part of Air NZ breaching its good faith obligations to FAA and undermining FAA with its members and potential members in what was described as "a competitive situation" with E tū.

[74] Analysing whether or not the s 9 prohibition on preference might have applied in this case is not, however, that straightforward or simple.

[75] The free breakfast provided to FAA members could be examined under the lens of the s 9 prohibition on a contract, agreement or arrangement that confers, among other things, a fringe benefit because a person is or is not a member of a union or a particular union. It resulted from a term in the SPMoU which, as described earlier, is a contract or agreement. However, s 9 also notes that a mere difference in one employee's terms from another employee is not a breach. Another exception, relating to terms in collective agreements, does not apply to the present circumstances because the SPMoU is not a collective agreement and there is no reference in the FAA CA to free breakfasts.¹⁰

[76] In that context, FAA had not established Air NZ failed to act in good faith in responding to the concern raised by E tū. Rather, the correspondence between Air NZ and FAA showed the airline had been active, communicative and responsive in alerting FAA to the issue and the steps it was taking to address concerns about the scope and, from the airline's perspective, unintended cost of the provision.

Outcome

[77] On the conclusions reached in this determination about the interpretation and application of provisions about FOC breakfasts, FAA has not established Air NZ breached commitments made in the SPMoU or failed to act in good faith in addressing concerns that arose. FAA's application for findings to the contrary is declined.

Costs

[78] Applying the Authority's practice for investigations of disputes about collective matters in employment relationships, the parties are to bear their own costs.

Robin Arthur
Member of the Employment Relations Authority

¹⁰ Employment Relations Act 2000, s 9(3).