IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND

I TE RATONGA AHUMANA TAIMAHI
TĀMAKI MAKAURAU ROHE

[2025] NZERA 401
3314920

	BETWEEN	E TŪ INCORPORATED Applicant
	AND	AIR NEW ZEALAND LIMITED Respondent

Member of Authority:	Robin Arthur
Representatives:	Emily Griffin and Nina Santos, counsel for the Applicant Scott Worthy and Anthony Kamphorst, counsel for the Respondent
Investigation Meeting:	15 April 2025
Determination:	8 July 2025

DETERMINATION OF THE AUTHORITY

Employment relationship problem

[1] This determination concerns a dispute between E tū and Air New Zealand over how clauses in their Wide-Body Collective Agreement 2022-2024 are interpreted and applied in preparing rosters for union members working as flight attendants on long haul international flights.

[2] Each roster is of 28 days' duration. Thirteen rosters are issued each calendar year. Because of the nature of the airline industry and the flight attendant role, each day of the year is treated as a potential working day, unless the attendant is taking leave or is rostered off from work.

[3] The specific issue in dispute concerns the situation where a flight attendant is taking some days of leave during a 28-day roster period.

[4] The collective agreement requires each 28-day roster to include ten rostered days off (RDOs) for the flight attendant.

[5] In preparing the roster for a flight attendant who is taking annual leave or public holiday-related leave during those 28 days, a long-standing formula is applied so some of the 10 RDOs are deemed to have occurred *during* those leave days. The deduction of those deemed RDOs identifies the number of remaining RDOs to be allocated (as non-work days) during the rest of the roster.

[6] The parties are in dispute over whether the phrase "unavailable days" used on the roster includes or excludes any public holiday and alternative holiday entitlements being used by a flight attendant during that particular roster period. It is an important point because this tally of "unavailable days" is then used to identify the number of days which remain to be allocated to the attendant as RDOs in that roster period.

[7] In E tū's argument, the formula for calculating which RDOs remain to be worked should *not* include any days of leave being taken that use those holiday entitlements. For reasons explained later in this determination, this approach would result in the flight attendants having more RDOs and fewer duty days in roster period where they were taking that type of leave.

[8] In Air New Zealand's argument, the public and alternative holiday entitlements are part of the leave being taken, so properly count towards a tally of "unavailable days". The higher this tally is, the fewer RDOs remain to be allocated in that roster period and more days remain on which the attendant can be rostered to work.

[9] Shorn of detail, the dispute effectively concerns whether the flight attendants should get more days off (as RDOs) or continue to work the number of days they presently do under Air New Zealand's application of the formula.

The Authority's investigation

[10] Three flight attendants provided written witness statements in support of the union's application: Sandie Bartlett, Tony Krauth and Sheree Cavanagh. For Air New Zealand Tim Riddell, a payroll specialist, and Kylee Paterson, a Cabin Crew strategy leader, provided witness statements.

[11] The five witnesses attended the investigation meeting and, under affirmation, answered questions from me and the parties' representatives. The representatives also gave oral closing arguments, speaking to written submissions.

[12] As permitted by s 174E of the Employment Relations Act 2000 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 evidence and submissions received.

Terms of the collective agreement

[13] The dispute concerns interpretation and application of the following terms of the collective agreement:

> 7.7 Days Off at Home Base
>
> 7.7.1 A minimum of ten days off at home base will be Rostered in each 28-day roster period for full time Flight Attendants.
>
> …
>
> 7.7.5 …
> For the purposes of calculating days off entitlement in a roster containing leave, the standard pro rating system will apply for full time Flight Attendants.
>
> 10. Annual Leave
>
> …
>
> 10.5 By way of annual leave and/or entitlement for public holidays for the purposes of the Holidays Act 2003:
>
> 10.5.1 (Annual leave) After the end of each completed 12 months of continuous service as a Flight Attendant, each Flight Attendant is entitled to 31 consecutive days of annual leave.
>
> 10.5.2 (Other leave) In respect of entitlement for public holidays as listed in section 44(1) of the Holidays Act 2003, for each year of service, a permanent Flight Attendant will be credited with a further 12 consecutive days of leave each year comprising:
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> (a) Except where (c) applies, an additional annual holiday for each public holiday on which a Flight Attendant is not Rostered duties.

(b) An Alternative Holiday (under the Holidays Act 2003) for each public holiday on which a Flight Attendant is Rostered duties.

(c) An observed public holiday when a public holiday falls during a period of leave.

[14] The parties agreed that the "standard pro rating system" referred to in clause 7.7.5 was set out in the following table, which had been included as an appendix in the previous collective agreement:

APPENDIX G PLANNED LEAVE PRO-RATION TABLES (APPLICABLE TO ALL LONG-HAUL FLIGHT ATTENDANTS AND FSMS)

Full Time Flight Attendants and Flight Service Managers

Unavailable Days in Roster	Full Time Prorated Days Off	Minimum of Rostered Days Off Showing on Roster
0	0	10
1	0	10
2	1	9
3	1	9
4	1	9
5	2	8
6	2	8
7	3	7
8	3	7
9	3	7
10	4	6
11	4	6
12	4	6
13	5	5
14	5	5
15	5	5
16	6	4
17	6	4
18	6	4
19	7	3
20	7	3
21	7	3
22	8	2
23	8	2
24	9	1
25	9	1
26	9	1
27	10	0
28	10	0

[15] The agreement included a definition of the word "Rostered" as meaning "at roster publication date".

Principles on interpretation

[16] The interpretation of terms in collective agreements and other agreements between parties to an employment relationship is guided by the legal principles applied to interpretation of contracts generally.[1]

[17] The proper approach, as explained by the Supreme Court, is an objective one:[2]

> ... 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. …

[18] The Supreme Court has also emphasised the importance of the relational emphasis in the statutory context in which the contractual rights and obligations in employment relationships are considered. This includes the principle of good faith, applying not only between employers and workers but also between employers and workers' unions:[3]

> … 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.

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[1] *New Zealand Air Line Pilots' Association Inc v Air New Zealand Ltd* [2017] NZSC 111 at [74]–[78].
[2] *Firm PI 1 Ltd v Zurich Australian Insurance Ltd* [2014] NZSC 147 at [60] and [63] (footnotes omitted).
[3] *FMV v TZB* [2021] NZSC 102, [46]-[47] and [50]-[51] (footnotes omitted).

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

The issues

[19] Discussion with the parties' representatives confirmed two points which narrowed the scope of the issue in dispute.

[20] Firstly, E tū did not allege Air New Zealand's application of clause10.5.2, in its pro-ration table, breached provisions of the Holidays Act 2003 (the HA). The dispute was solely contractual.

[21] Secondly, in earlier negotiations the parties had agreed, in principle, to exclude leave entitlements earned under clause 10.5.2(b) – that is the alternative holiday for having worked on a public holiday – from the tally of "unavailable days" in the pro-ration table.

[22] However, as explained in Ms Paterson's evidence, Air New Zealand had not yet implemented this change when drawing up rosters because it required complex changes to its rostering and pay systems. Air New Zealand was seeking full resolution of issues relating to clause 10.5.2 before embarking on those changes. Meanwhile, the company was preserving data necessary for adjustments to be made to records, pay and entitlement once the matter was fully resolved.

[23] Remaining for resolution, through this determination, was the issue of whether the terms of the collective agreement, correctly interpreted and applied, allowed Air New Zealand to include the leave provided by clauses 10.5.2(a) and 10.5.2(c) in the tally of "unavailable days" in the pro-ration table. Incidental to this issue was a question as to whether the pro-ration related only to the number of RDOs or also had the effect of reducing the value of leave days being taken.

The union's argument

[24] The union submitted both RDOs and assigned planned leave were "the subject" of the pro-ration table formula as it was presently used by Air New Zealand.

[25] It referred to the following example, given in Mr Riddell's evidence, as showing how inclusion of leave days earned under the clause 10.5.2 provisions "reduces the value" of those holidays.

[26] In this example a flight attendant had 14 days of leave. It comprised 12 days of annual leave, one day of leave to observe a public holiday which occurred during this period of leave and one alternative holiday, being an entitlement gained from working a previous public holiday.

[27] The public holiday, occurring during a period of annual leave, was treated as observed and paid for as a public holiday under clause 10.5.2(c). (This is consistent with HA s 40(1) which requires a public holiday occurring during an employee's annual holidays to be treated as a public holiday and not part of the employee's annual holidays.)

[28] The alternative holiday was a day earned under clause 10.5.2(a). It was for a public holiday which had occurred when the attendant was not rostered to work. (The HA does not provide for an alternative holiday if the public holiday falls on a day that the worker was not due to work but this collective agreement does provide an equivalent holiday. The collective agreement describes the day as "an additional annual holiday" but it is to the same effect as the alternative holidays provided under HA s 56 for worked public holidays.)

[29] On Air New Zealand's approach the attendant was taken to have 14 "unavailable days" for rostering purposes – 12 days of annual leave, one public holiday and one alternative holiday.

[30] Turning to the pro-ration table, the attendant's leave is deemed to have included 5 RDOs as occurring during their time off. Five RDOs then remained to be allocated in the remaining 14 days of the roster.

[31] In the union's submissions, however, Air New Zealand incorrectly regarded the public holiday observed and the alternative holiday taken as being days that the attendant was "unavailable". It described this point as "the crux of the dispute".

[32] The union agreed annual leave days were "unavailable days" but said each type of "other leave" referred to in subclauses (a), (b) or (c) of clause 10.5.2. were "not necessarily unavailable days because they *can* be worked". It said, for example, a public holiday which fell during a period of leave could, if it was on a day outside that period, have been a rostered day of work so was not "unavailable".

[33] The point of the distinction that the union sought to make was that the inclusion or classification of this public holiday-related leave as unavailable days then affected the calculation of RDOs in the balance of the roster.

[34] This was demonstrated in the example given earlier of the attendant taking 14 days leave comprising 12 days of annual leave, one public holiday observed and one alternative holiday.

[35] If the union's definition of "unavailable days" was adopted, excluding the two public holiday-related days, only the 12 annual leave days would be counted as "unavailable days". The pro-ration table formula would then require only four, not five, RDOs to be deducted from the total of ten allowed for during that roster period. The result would be that, during the 14 potential working days that remained in that roster, the attendant would be entitled to have six RDOs allocated to them, not the five RDOs provided by how Air New Zealand applied the formula.

[36] This difference, having one more day off or having to work one more day in that 28-day period, gave rise to the union's argument that the pro-ration formula was affecting the value of the leave available to the attendant.

[37] This effect on the value of leave could be described in two ways, on the union's argument of what should be counted as an unavailable day.

[38] One was simply that the attendant got two days of public-holiday related leave but had to work an extra day for it during that 28-day roster because they had one less RDO due to how Air New Zealand defined "unavailable days".

[39] Another way of describing this point was to say the attendants ended up working several extra RDOs during the year which made some percentage difference to the overall annual value of the pay and leave they received for their work.

[40] Drawing its submissions together, E tū sought a finding that the following proposition was correct:

> The flight attendants have entitlement to 43 days [leave] which is divided into annual leave (31 days) and the public holidays (12 days). The annual leave days are unavailable days for the purposes of pro-ration and determining the RDOs in a roster when leave appears. Public holidays are not necessarily unavailable days as clause 10.5.2 prescribes. Public holidays can be worked days and therefore are not by nature or definition unavailable days.

Air New Zealand's argument

[41] Air New Zealand said the framework for leave entitlements, rostering and pro-ration of days off when taking planned leave used a long-standing formula. The pro-ration table for RDOs was specifically referred to in the previous collective agreement and there was no dispute between the parties that this table and its formula was incorporated and of contractual effect in the current agreement.

[42] The company submitted there was a clear distinction between the leave referred to in clause 10.5, which was annual leave and public holiday-related leave, and the "minimum of ten days off at home base" referred to in clause 7.7.1 and the "days off" referred to in clause 7.7.5. Those "days offs" were the RDOs akin to weekend rest days that, in other occupations, a Monday to Friday worker would have. The phrase did not refer to annual leave and holiday leave.

[43] As noted in Ms Paterson's evidence, the parties had sometimes loosely referred to pro-ration of "leave" when talking about this issue, but Air New Zealand submitted use of the formula set out in the pro-ration table affected only the clause 7.7 "days off" and not the clause 10.5 annual leave and public holiday-related entitlements.

[44] Accepting the collective agreement did not define the meaning of the phrase "unavailable days in roster" as used in the pro-ration table, Air New Zealand submitted

it simply meant days the flight attendant was not available for rostered duties because they were on leave of one or other type provided in clause 10.5.2.

[45] Air New Zealand had accepted the leave provide in sub-clause 10.5.2(b) should be treated differently but, in evidence and submissions, had not fully explained the basis of the distinction from the leave provided in sub-clauses (a) and (c).

[46] There was some evidence that the terminology used on pay slips for the three categories of "other leave" could cause confusion but, in Air New Zealand's submission, this did not indicate any shortcoming in meeting HA requirements or bear on the issues in dispute in this matter.

[47] Ultimately, Air New Zealand submitted its application of the pro-ration formula applied only to the calculation of RDOs, did not affect the value of leave days and correctly applied provisions of the collective agreement.

Analysis

[48] Resolution of this dispute rests on the ordinary and natural meaning of the words "leave" (as used in clause 10.5), "days off" (as used in clause 7.7) and the phrases "planned leave" and "unavailable days" as used in the pro-ration table agreed by the parties as being incorporated in the collective agreement by the reference in clause 7.7.5 to "the standard pro-rating system".

[49] As submitted by Air New Zealand, the word "leave" in the context of this collective agreement and the dispute about its terms refers to both annual leave and the three types of public holiday-related leave provided in clause 10.5.2. Those days are distinct from the "days off" referred to in clause 7.7 and specifically its use in reference to the standard pro rating system applied for "calculating days off entitlement in a roster containing leave" at clause 7.7.5.

[50] Turning to that standard pro rating system, the ordinary meaning of the phrase "planned leave" has two aspects. Firstly, use of the word "leave" includes both annual leave and public holiday-related leave. It is not confined solely to annual leave. Secondly, its reference to "planned" leave incorporates both annual leave and the public holiday-related leave taken as result of being applied for and then rostered.

[51] The ordinary meaning of the phrase “unavailable days” has no distinction in the categories of leave being taken. A worker is not available to carry out their usual duties if they are on annual leave or using some other category of planned leave – by observing a public holiday in the ways provided in subclauses (a) and (c). They are plainly not ‘available’ to work on those days of leave.

[52] The wider context does not point to some other interpretation. The evidence given by the flight attendants in this case disclosed a concern about how the elements of the formula affected the overall ratio of days worked and their non-working days, being taken either as leave or rostered days off.

[53] If the parties wished to agree a different meaning or scope of the phrase “unavailable days” they are free to do so, but it is not a change that is appropriately achieved by adopting an interpretation and application of that term different from the one they have followed over an extended period of time, including during the negotiation and ratification of a number of collective agreements, or different from the ordinary and natural meaning of the words used in their agreement.

Outcome

[54] For the reasons given, E tū’s application for a finding in favour of its proposed interpretation of the relevant terms of the collective agreement is declined.

Costs

[55] This matter is subject to the presumption, applied in the Authority’s exercise of its discretion regarding costs, that parties bear their own costs in disputes about the application, interpretation or operation of a collective agreement.[4]

Robin Arthur
Member of the Employment Relations Authority

[4] Practice Direction of the Authority, 1 February 2024 available at *www.era.govt.nz*.