

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

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

[2025] NZERA 463
3317580

BETWEEN	NEW ZEALAND AIR LINE PILOTS' ASSOCIATION INDUSTRIAL UNION OF WORKERS INCORPORATED Applicant
AND	JETSTAR AIRWAYS LIMITED Respondent

Member of Authority: Alex Leulu

Representatives: John Hall, counsel for the Applicant
Michael O'Brien, counsel for the Respondent

Investigation Meeting: 21 May 2025 in Auckland

Submissions received: At the investigation meeting

Determination: 31 July 2025

DETERMINATION OF THE AUTHORITY

Employment relationship problem

[1] The New Zealand Air Line Pilots' Association Incorporated (NZALPA) lodged claims at the Authority against Jetstar Airways Limited (Jetstar) for alleged breaches of both the collective agreement between them and s 59 of the Holidays Act 2003 (the Holidays Act). NZALPA claimed its pilot members (the pilots) were entitled to an alternative holiday for being rostered on "standby" during a public holiday.

[2] Jetstar opposed NZALPA's claims on the basis it had acted in accordance with its obligations under both the Holidays Act and the collective agreement. It argued the pilots were not entitled to an alternative holiday in a situation where they were rostered to be on standby on a public holiday and were not required to work.

The Authority's investigation

[3] For the Authority's investigation written witness statements were lodged from NZALPA pilot members, Richard Greenslade and Greig Johnston. For Jetstar written witness statements were lodged from senior managers Geoffrey Metcalf and Leah Everton. All witnesses answered questions under oath or affirmation from me and the parties' representatives. The representatives also gave oral closing submissions.

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

The issues

[5] The issues requiring investigation and determination were:

- (a) Whether NZALPA pilot members were entitled to alternative holidays when rostered on standby during a public holiday (but are not called out)?
- (b) If so, to also determine whether Jetstar breached:
 - (a) the terms of the collective agreement between the parties; and
 - (b) the requirements of s 59 of the Holidays Act?
- (c) Should either party contribute to the costs of representation of the other party?

Context

Jetstar's operation in New Zealand

[6] Jetstar operates as an aviation carrier providing domestic and overseas flight services from New Zealand to Australia and the Pacific. Jetstar first commenced its New Zealand operations in 2008. Jetstar's ability to operate in New Zealand arose through its majority shareholder, Jetstar Airways Pty Ltd (Jetstar Australia).

[7] Jetstar Australia is able to conduct air operations in Australia and New Zealand through its Australian Airline Operating Certificate and is responsible for:

- (a) all Jetstar branded flights within New Zealand and the majority of Jetstar flights between New Zealand and Australia, and the Pacific; and

(b) providing Australian registered aircraft which is used for its services in New Zealand and abroad.

[8] In New Zealand, Jetstar employs and provides pilots and cabin crew on domestic, trans-Tasman and Pacific Island flights operated via Jetstar Australia.

The collective agreement

[9] Since beginning its operations in New Zealand, Jetstar and NZALPA have been party to four collective agreements. The latest agreement being in 2024 (the collective agreement).

[10] Since the first collective agreement between the parties, there has always been a clause for pilot entitlements to an alternative holiday for work performed on a public holiday. The provision applies if a pilot worked on a public holiday that is an otherwise working day and includes a pilot who was on standby or on a tour of duty (TOD) away from their designated home base. Clause 10.3.3 of the 2024 collective agreement states the following:

10.3.3 If a Pilot works on any part of a public holiday that is otherwise a working day for the Pilot (meaning a day that the Pilot is rostered to work), the Pilot shall be entitled to an alternative holiday paid at the Pilot's average daily pay rate applicable on the day taken as the alternative holiday. A Pilot will be eligible for an alternative holiday under this clause, if they actually perform work during a Standby or are on a TOD away from Home Base.

Jetstar's pilot rostering system

[11] Under the collective agreement, a pilot's roster is published on a monthly basis 10 days prior to the beginning of the working month. Jetstar's roster system is automated and assigns several various different types of days to pilots which include rostered days off, duty or working days, and standby days. When assigning days to pilots, the rostering system takes into account various rules, requirements as well as leave and pilot preferences. An example of a rule is the obligation on Jetstar to try to avoid rostering a standby day between two days off.

Pilots rostered on standby

[12] To ensure operational stability and maintaining its flight schedule, Jetstar assigns pilots on standby to cover any disruptions to its service (such as an unexpected illness).

[13] Jetstar's monthly roster is made available electronically to pilots through an online portal. A standby pilot will initially be notified via the portal if they are required for duty. This is usually followed by a Jetstar phone call to the pilot to confirm the call to duty.

[14] When a pilot is rostered on standby, a pilot is required to be contactable during the standby period. If required for duty, a pilot must report for duty within 2 hours from contact being made. A standby pilot may be assigned for duty either on the day or any day leading up to the rostered standby date.

[15] If a pilot is not assigned a duty during the standby period, the day becomes a day free of work for the pilot. Given pilots are paid a salary, their pay is not dependent on the actual performance of work.

The parties' arguments

NZALPA's arguments

[16] Under the Holidays Act, employees are entitled to an alternative holiday when:¹

- (a) they work on a public holiday that would otherwise be a working day; or
- (b) are on-call on a public holiday that would otherwise be a working day, and their day-to-day activities are limited to the extent they have not enjoyed a full holiday.

[17] NZALPA argued the pilots rostered on standby on a public holiday were restricted to the extent that they did not enjoy the benefit of a whole holiday. For this reason, it said the pilots were entitled to an alternative holiday. In support of its position, NZALPA relied on the evidence of Mr Johnston where he explained the following restrictions and complications associated with a pilot being on standby:

- (a) limitation on the consumption of alcohol;
- (b) the requirement to attend work within two hours after being called to duty;
- (c) ensuring the pilot is prepared with their uniform to attend duty when called upon;

¹ Holidays Act 2003, s 59.

- (d) restrictions on activities including properly spending time with family and limitation of travel distances from either work or home; and
- (e) limitation on taking medication and medical operations (such as seeing a dentist) which can affect a pilot's ability to work if called to duty.

[18] NZALPA submitted these restrictions imposed a significant limitation on the pilots. It said these limitations were made more onerous when a pilot had to ensure they were contactable at all relevant times while on standby. NZALPA relied on various provisions of the collective agreement which ensured there was a significant level of contractability while on standby including;

- (a) having access to an iPad to ensure they had electronic access to the Jetstar roster (to check whether they were being called to duty);
- (b) ensuring their contact details held by Jetstar were up to date;
- (c) to respond to telephone calls and text messages from Jetstar;
- (d) to make contact with Jetstar once a message has been received; and
- (e) respond to telephone calls and text messages as soon as possible.

[19] In line with the purpose of a public holiday under the Holidays Act, NZALPA also said the pilots were restricted from observing occasions of national, religious or cultural significance. As a result of the restrictions it said it prevented the pilots from celebrating this purpose with friends and family.²

Jetstar's arguments

[20] Jetstar denied it breached the collective agreement saying its actions were consistent with the plain meaning of clause 10.3.3. The plain meaning being a pilot rostered on standby on a public holiday was not entitled to an alternative holiday unless they were required to work.

[21] In support of its position, Jetstar referred to evidence showing both parties historical discussions of the wording of clause 10.3.3 in previous collective agreement negotiations. The earliest negotiations between the parties were in 2010 where negotiations led to the 2011 collective agreement between them. Jetstar submitted these

² Holidays Act 20023, s 3(b).

previous negotiations show the parties had turned their minds to the wording of clause 10.3.3 and the potential for agreement over and above the statutory minimum. In the end the parties came to an agreement to a clause which aligned with the Holidays Act provisions.

[22] Jetstar also denied it breached the requirements of the Holidays Act and said the restrictions imposed on the pilots while on standby were minimal.³ It disputed Mr Johnston's evidence claiming the restrictions he had identified were:

- (a) inherent for any employee being on standby; and
- (b) some of the restrictions such as the requirement to abstain from alcohol consumption were not unique to those on standby.

The Authority's assessment

[23] The key issue for this matter was whether in accordance with the Holidays Act, pilots on standby during a public holiday were restricted to the extent they have not enjoyed a full holiday (and therefore entitled to an alternative holiday).

[24] There is no dispute that an employee on call or on standby during a public holiday would face some degree of restriction. This includes a restriction on not being able to fully observe occasions of national, religious or cultural significance with certain family and friends.

[25] As stated by Jetstar, some restrictions are an inherent part of being on call such as being unable to consume alcohol, being contactable and being available to respond within a specific time once being called out.

[26] Mr Johnston's evidence about being contactable fell well within the realms of what would be expected for an employee for ensuring they were aware of any requirement to be called to work.

[27] As part of its submissions, Jetstar also referred to a number of previous Employment Court and Authority cases which provided different assessments as to the level of restriction imposed on employees for each respective case. Although these

³ Holidays Act 2003, s 59(3).

provide some indications of how restriction similar to this case were addressed in those cases, each case will depend on its specific facts and the nature of the employee's role.

[28] Given the nature of the pilot's role in this case, issues such as health and safety meant the Jetstar restrictions on the consumption of alcohol and medication were reasonable. The other restrictions such as limitation on activities and the requirement to attend work were not significantly onerous and were not outside the usual bounds of planning one might be expected to undertake knowing they are rostered to be on standby.

[29] Mr Johnston's evidence also focussed on him residing in Bombay and the logistical difficulties and restrictions he faced trying attend work within two hours after being called to duty while on standby. It is difficult to understand how Jetstar could account for any restriction on a pilot based upon where they decide to reside. Where a pilot resides is ultimately a decision by the pilot knowing their employment obligations. Little weight can be given to Mr Johnston's evidence in this regard.

[30] For reasons already stated, the restrictions imposed on the pilots while on standby were not sufficient to conclude their freedom of action meant they did not enjoy a whole public holiday.

[31] I accept the Jetstar pilots who are on standby during a public holiday are not entitled to an alternative holiday unless they are called to duty. For this reason, Jetstar did not breach the terms of the collective agreement or the Holidays Act. Accordingly, NZALPA claims were not successful.

Costs

[32] Based on the claims before the Authority, I determine this matter as one concerning a dispute over the application, interpretation, or operation of terms of a collective agreement.

[33] The Authority generally applies a presumption that parties will bear their own costs.⁴ There are no compelling reasons which would suggest this matter to be treated otherwise. Accordingly, the costs will fall where they lie.

⁴ See "Costs in the Authority", Practice Direction of the Employment Relations Authority.

[34] Should either party consider the presumption should not apply, a memorandum to that effect should be lodged and served within 14 days.

Alex Leulu
Member of the Employment Relations Authority