IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND

I TE RATONGA AHUMANA TAIMAHI
TĀMAKI MAKAURAU ROHE

[2025] NZERA 50
3247539

	BETWEEN	MARY TOOMEY First Applicant
	AND	E TŪ INCORPORATED Second Applicant
	AND	AIR NEW ZEALAND LIMITED Respondent
Member of Authority:	Peter Fuiava	
Representatives:	Peter Cranney and Emily Griffin, counsel for the First and Second Applicants David France, counsel for the Respondent	
Investigation Meeting:	30 August 2024 in Auckland	
Submissions and information received:	17 September and 7 October 2024 from the Applicants 30 September and 30 October 2024 from the Respondent	
Determination:	31 January 2025	

DETERMINATION OF THE AUTHORITY

What is the issue?

[1] This employment relationship problem is about the meaning of the phrase "retain his/her existing salary" as this appears in cl 4.1.5 of Appendix V of the Mid Haul Collective Agreement 2016-2019 (MHCA) between E Tū Incorporated (E Tū or the union) and Air New Zealand Limited (Air NZ or the company).

[2] Appendix V of the MHCA covered flight attendants, including Mary Toomey, who worked on Air NZ's Long Haul B777s and were grand parented under the Long Haul Collective Agreement (LHCA) between the union and the company. Under that collective agreement, Ms Toomey worked as an Inflight Service Coordinator (ISC)

which required her to carry out training of other staff and to hold the appropriate qualification to perform such training.

[3] When Air NZ was forced to ground its B777 fleet in 2020 in the wake of the global COVID-19 pandemic, Ms Toomey was transferred to work on the Mid-Haul B787s as a Deputy Service Manager (DSM). In contrast to ISCs who were required to train other flight attendants, the provision of training was not compulsory for DSMs unless they wished to become a trainer and checker themselves. If approved, a trainer-checker DSM was paid an additional 15 percent of their base salary in recognition of their extra responsibilities.

[4] Ms Toomey contends that the phrase "retaining his/her existing salary" means that upon transfer, her ISC base salary (including overtime, allowances, and various leave provisions) became protected and could not be reduced for whatever reason. It followed that, if she, and other grand-parented ISCs, wished to cease doing training, their employer could not reduce their existing base salary which needed to be retained as an ongoing right.

[5] Air NZ disagree with the applicants' interpretation and submit that it was commonly understood by the parties that Ms Toomey's ISC base salary was higher than the DSM base salary because of her training responsibilities as ISC. It was submitted that "retaining his/her existing salary" meant that when ISCs were transferred to work Mid Haul, not only were their existing salaries transferred but also their training duties for which ISCs had been paid to perform under the LHCA.

How did the Authority investigate?

[6] The applicants' case comprised witness statements from Ms Toomey and Sheree Cavanagh, a work colleague and former ISC. For Air NZ, Cabin Crew Strategy Delivery Lead, Kylee Paterson, Senior Manager Cabin Crew, Sarah Murray, and Cabin Crew Manager, Regan Close, provided witness statements to the Authority. All witnesses were questioned and the opportunity to cross-examine was provided. Following the investigation meeting, written closing submissions from both counsel were filed and have been considered.

[7] As permitted by s 174E of the Employment Relations Act 2000, 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.

What are the relevant facts?

[8] On 10 April 1995, Ms Toomey was employed by Air NZ as a long-haul flight attendant. In 2001, she became an ISC which has the following definition in the LHCA:

> **Inflight Service Coordinator (ISC)** is a Flight Attendant who is employed by the Company as a Long Haul Flight Attendant and who, in addition to the duties defined … undertakes inflight training, coaching, inflight assessment of performance and standards and supports/deputises as is required for the Flight Service Manager.

[9] After the "redundancy cull" (as Ms Toomey puts it) in mid-to-late 2020, Air NZ provided a transfer letter (6 July 2020) that confirmed Ms Toomey's change in role from ISC on the Long Haul B777s to DSM on the Mid Haul B787s. It is common ground that the transfer letter makes no mention of Ms Toomey needing to provide training as part of her new role.

[10] It is also common ground that there is no rank of ISC in the MHCA as that role only existed under the LHCA. The closest comparable role in the MHCA to the ISC position was the DSM role which was defined in the MHCA as follows:

> **A Deputy Service Manager -** is an employee who was employed by the Company as a Mid Haul Flight Attendant who is responsible as deputy to the Inflight Service Manager. The DSM supports the ISM in the management of cabin crew's on-board performance.

[11] Both parties to this employment problem accept that there is no training requirement per se for a DSM. However, under the MHCA, a DSM could become a trainer and checker and was remunerated for as such:

> **8.8 Trainer and Checker**
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> 8.8.1 Employees who hold the position of Trainer and Checker shall be paid an additional 15% of their base salary in recognition of the extra responsibilities required of this position …

[12] When Ms Toomey transferred across to the MHCA as a DSM, her ISC base salary was higher than DSMs with trainer and checker responsibilities and who received the additional 15 percent payment noted above. According to Ms Paterson, that payment appears as a separate line in the DSM's payslip and was not an allowance but a payment for extra responsibilities.

[13] It was also Ms Paterson's evidence that Ms Toomey received additional training as a DSM and that she commenced training Mid Haul flight attendants on 7 September 2020.

[14] While there was a training component to Ms Toomey's previous role as ISC, because training was a shared responsibility for all ISCs, the time spent in doing so was modest. However, when New Zealand's border re-opened in 2022, there was a ramping up by Air NZ of flight-attendant recruitment with a resultant uplift in the amount of time spent on training by DSMs. However, that burden of training a large cohort of new recruits fell on a few DSMs who had training and checking responsibilities or were pre-MUCA ISCs like Ms Toomey and Ms Cavanagh who had transferred across.

[15] The first communication that Air NZ received that appeared to indicate that Ms Toomey wished to cease her training responsibilities was in a text message to her direct report, Mr Close, on 27 January 2023. However, that text was somewhat equivocal so the first communication from Ms Toomey expressing a belief that providing training was not part of her DSM role was in an email to Mr Close dated 4 March 2023. In that email, Ms Toomey tendered her resignation as a trainer but wished to retain her ISC salary. Mr Close's response included stating to Ms Toomey that if she were to relinquish her training duties as DSM, her remuneration would no longer be reflective of the role she was employed to do and that this would change her role and responsibilities.

What is the relevant law?

[16] The proper approach to be used in contractual interpretation is an objective one the aim of which is to ascertain the meaning that the document in question would convey to the reasonable person having all the background knowledge reasonably

available to the parties in the situation in which they were at the time of the contract.[1] If the language at issue construed in the context of the contract as a whole has an ordinary and natural meaning that will be powerful albeit not conclusive indicator of what the parties meant.[2] 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.[3]

Discussion

[17] It was common ground that Ms Toomey's letter of transfer was silent about the issue of training duties. Even so, it did refer to some terms and conditions in the MHCA being replaced by terms and conditions in the LHCA. This included the training and checking responsibilities at cl 8.8 of the MHCA (see [11] above) which meant that the 15 percent additional payment to DSM trainers and checkers would not apply to pre-MUCA ISC Flight Attendants such as Ms Toomey who had transferred across from Long Haul to Mid Haul.

[18] There is no evidence that Ms Toomey received the additional 15 percent payment on top of her existing ISC base salary post-transfer. A DSM Salary Comparison (2019-2024) provided by Air NZ establishes that, in 2019 and 2020, the base salary of a transferring ISC was some $5,000 to $7,000 higher than a DSM who had training and checking responsibilities. Considered in combination with the transfer letter, it can be inferred that Ms Toomey was not paid the additional 15 percent because she was already compensated for providing training as part of her previous role as ISC. It was for this reason that Air NZ wanted cl 8.8 of the MHCA not to apply to pre-MUCA ISC flight attendants to avoid inequity as ISCs would in effect be remunerated twice for work they were already compensated to perform under the LHCA.

[19] It was submitted that the definition of ISC in the LHCA (see [8] above) is of no legal effect whatsoever as the role was not transferred across to the MHCA. However, reference by Air NZ to the ISC definition was to set out the background as to how that role was mapped onto the rank of DSM for grandparented pre-MUCA flight attendants like Ms Toomey and Ms Cavanagh. Although not a perfect like-for-like substitution,

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[1] *Firm PI 1 Ltd v Zurich Australian Insurance Ltd* [2015] 1 NZLR 432 at [60].
[2] At [63].
[3] At [63].

the role of DSM substantially matched that of the ISC. It is not overlooked that this retro-fitting of two different roles on two different aircraft was a matter of necessity given the pandemic at the time and the grandparenting redundancy proviso that benefitted pre-MUCA Flight Attendants. Therefore, for a fuller appreciation of the background in order to aid interpretation, it is reasonable for the LHCA to be taken into consideration, where applicable.

[20] Conduct is also a relevant consideration. In August 2020, Ms Toomey received additional B787 training which included Flight Attendant Line Checks. The following month, on 7 September 2020, she commenced her training responsibilities of other flight attendants as DSM. Ms Toomey never questioned whether training was part of her role as DSM until her first unequivocal communication to Mr Close in early March 2023, some two-and-a-half years later. Ms Toomey says that she provided training to assist the company to rebuild post-Covid. While laudable, I find that another motivating factor was Ms Toomey's awareness that training was part of her ISC salary so that when she transferred across, her existing salary and concurrent training responsibilities and duties, followed suit.

[21] In addition, there is a contemporaneous document indicating a common understanding between the company and the union that ISCs who transferred into DSM roles would continue to have training responsibilities and duties. The document is an FAQ information sheet from E Tū dated 26 June 2020, which predates Ms Toomey's transfer to Mid Haul by some 10 days. Among the questions asked was whether a 777 ISC could confirm if all ISCs were keeping their training role on transferring to the 787s. The response was 'Yes', transferring ISCs would be trained as 787 trainer/checkers and retain a training component in their role as DSM.

[22] Mr Cranney refers me to a recent decision in the United Kingdom Supreme Court in which the Tesco Stores Limited was injuncted from dismissing and re-engaging employees on revised terms and conditions of employment. The decision is not on all fours with the present case in which Air NZ is effectively saying that Ms Toomey cannot have it both ways: she cannot relinquish her training responsibilities for which she is paid while still expecting to retain her ISC salary.

[23] As to the significant increase in training for DSMs because of a ramping up by Air NZ in flight-attendant recruitment, I understand that this has or is being addressed by the company in that there are presently 40 DSMs available to provide training. However, if the impact of training remains an issue for the parties, this is best left for them to resolve in future collective bargaining and negotiation. Finally, regarding the statement by Mr Close that Ms Toomey is not able to cease training duties without Air NZ's agreement, this is incorrect. The decision to cease training is a matter for the pre-MUCA ISC flight attendant. However, for the reasons given above, if his or her decision is ultimately to relinquish their training responsibilities, this would not be without some reduction to their ISC base salary.

Conclusion

[24] It was submitted that Ms Toomey's salary is protected and is to be retained regardless of whether she accepts or declines to undertake training and checking work. That interpretation is only available if the aperture is limited to the letter of transfer and the MHCA. However, there is more to the background information than this.

[25] When I consider all the background material including the LHCA and the various other documents mentioned above both individually and cumulatively, I find that the words "retain his/her existing salary" is not limited to transferring an employee with their existing salary but also transferring any duties the salary compensated the employee to do. For Ms Toomey, this means having relinquished her training responsibilities, this will not be without some cost to her salary. I make no determination as to what percentage reduction that might be preferring for the parties to attempt that calculus for themselves in the first instance.

Costs

[26] The Authority's Practice Direction, effective 1 February 2024 sets out in one document an outline of the steps parties appearing before it can expect which includes the award of reasonable costs and expenses.[4] There are certain categories of cases where there is a presumption that parties bear their own costs. The present case falls within one of these categories: disputes about the application, interpretation or operation of a collective agreement.[5]

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[4] https://www.era.govt.nz/assets/Uploads/practice-direction-of-the-employment-relations-authority.pdf
[5] Practice Direction pg.5 at 6.

[27] It is understood that Air NZ agrees with my preliminary view on costs namely that these should lie where they fall. As such, I make no order for costs.

Peter Fuiava
Member of the Employment Relations Authority