

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

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

[2025] NZERA 730
3302120

BETWEEN E TŪ INCORPORATED
 Applicant

AND AIR NEW ZEALAND
 LIMITED
 Respondent

Member of Authority: Matthew Piper

Representatives: Emily Griffin and Nina Santos, counsel for the
 Applicant
 Scott Worthy and Anthony Kamphorst, counsel for the
 Respondent

Investigation Meeting: 20 August 2025 in Auckland

Submissions received: 31 July 2025 from the Applicant
 14 August 2025 from the Respondent

Determination: 13 November 2025

DETERMINATION OF THE AUTHORITY

Employment relationship problem

[1] E tū Incorporated (E tū) and Air New Zealand Limited (Air NZ) are parties to a collective agreement covering short-haul flight attendants which expired on 5 October 2025 (the Collective). The Collective includes rules that govern the creation of rosters for flight attendants working on short-haul flights.

[2] E tū claimed that Air NZ was incorrectly classifying particular days as “slash or blank” days (Blank Days) in its members’ rosters, and that when this occurred its

members were not enjoying the correct terms of the Collective associated with those days.

[3] Air NZ's position was that it carefully complied with the terms of the Collective when setting rosters and that its use of Blank Days in rosters is consistent with the Collective.

[4] This matter required the Authority to resolve a dispute about the interpretation, application and operation of the Collective. Accordingly, the Authority's task was to establish the context relevant to the dispute and then determine the correct construction and interpretation of the Collective so as to decide whether Air NZ's approach to Blank Days is permissible.

The Authority's investigation

[5] Given the Authority's investigation focused on interpreting the Collective, it proceeded on the basis of affidavit evidence and an investigation meeting during which the parties presented their submissions.

[6] For E tū affidavits were lodged from union delegates Kris Torrance, Andre Carpenter and Sarah Harrison. For Air NZ affidavits were lodged from Cabin Crew Manager Julie Mason and Senior Workforce Management Strategy and Optimisation Specialist Christian Osorio.

[7] I have carefully considered the evidence and submissions provided. 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 issue for determination

[8] E tū sought a determination that Blank Days are off duty days, also known as "free of duty" days (Off Days). Beyond this, E tū did not seek any other remedy.

Context for the issue

[9] The parties agree that the Collective provides a set of rules governing rosters and therefore when a flight attendant may be required to work. These rules are

considered together with Air NZ's operational requirements and other regulatory and statutory parameters to create flight attendants' rosters.

[10] Air NZ said that when setting rosters there are times when a flight attendant could be required under the Collective to work on a particular day, but there is no work for them. The company designates such a day as a Blank Day. A flight attendant's salary is not affected by the presence of a Blank Day in their roster.

[11] Air NZ said only days which could otherwise have been rostered as duty days are capable of being Blank Days. Other days such as Off Days, annual leave days or public holidays are not treated as Blank Days.

[12] Accordingly, a Blank Day being placed in a flight attendant's roster means no particular duties have been allocated to the flight attendant on that day.

[13] However, Air NZ's practice is that it may require flight attendants to work on a Blank Day provided it informs them before 17:59 the day prior of the requirement to work. The source of this approach to provision of notice of a requirement to work on a Blank Day is not the Collective, rather it is a "General Bulletin" published in December 2021, which E tū says is not well known among its members and which it says has no particular legal effect.

[14] Although the Collective does not refer to the concept of a Blank Day, Air NZ said it has been including Blank Days in flight attendant's rosters since at least 2017. It is therefore a long-standing practice.

[15] The Authority's task is to determine whether Air NZ's approach to and use of Blank Days is permissible under the Collective, or whether, as E tū has claimed, the Collective requires that the factual situation currently given the label of Blank Day by Air NZ, should actually be an Off Day.

Interpreting the Collective

[16] In order to determine whether Air NZ's approach to the use of Blank Days is permissible, the Authority must establish the objective meaning of the Collective. This objective meaning is taken to be what the parties intended.

[17] Contextual considerations may be relevant, but only to the extent they support this objective analysis. The Employment Court has recently summarised the correct approach to interpreting collective agreements as being:¹

Contract interpretation principles apply to collective agreements

[20] Although collective agreements are not contracts in the conventional sense, the central principles of interpretation relating to contracts also apply to them.

[21] The proper approach is an objective one, with the aim of ascertaining the meaning that the document would convey to a reasonable person, having all the background knowledge that would reasonably have been available to the parties in the situation in which they were in at the time the agreement was concluded. This objective meaning is taken to be what the parties intended. While there is no conceptual limit on what may be regarded as “background”, it has to be background that a reasonable person would regard as relevant. Accordingly, the context provided by the agreement as a whole and any relevant background informs meaning.

[22] Further, 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 collective agreement 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.

[23] Collective agreements have unique features that distinguish them from commercial contracts. These include their relational nature, representing the progression of an employment relationship on an ongoing basis over a lengthy period, the fact that the collective agreement is a creature of statute, and the reality that, generally, collective agreements are not drafted, negotiated, or settled by practising lawyers. Another important feature is that collective agreements are negotiated between the employer and the relevant union(s) but then bind union members even where they did not vote to ratify the terms of the collective agreement and/or were not employed at the time the collective agreement was entered into. [citations omitted]

[18] The Authority’s role in this context is not to fix the terms agreed between the parties under the Collective. Rather, it is to interpret the Collective’s objective meaning, in order to determine what the parties intended at the time it was entered into.

[19] In order to undertake this exercise, emphasis must be placed on understanding and interpreting how the Collective deals with rostering work for flight attendants. That is not to say particular words in isolation will be determinative of the parties’ intent.

¹ *Secretary For Education v Public Service Association – Te Pūkenga Here Tikanga Mahi Inc* [2024] NZEmpC 248.

Rather, it is the Collective's provisions properly understood together that provide its objective meaning.

How the Collective deals with rostering

[20] The Collective is divided into general terms and two schedules. It is the first of these schedules, known as "Schedule 400", that contains the relevant provisions.

[21] In particular, clause 6 of Schedule 400 is labelled Hours of Duty and prescribes the rules the parties have agreed for the setting of rosters. The interpretation of these rules determines whether Blank Days are permissible.

[22] It is common ground between the parties that the rules relating to setting short-haul flight attendant's rosters are complex. In practice, Air NZ is required to carefully apply clause 6 of schedule 400 so that it can set flight attendants' work patterns in a compliant manner. Air NZ said it uses a complex and expensive computer system to apply the rules as prescribed by the Collective and that it can take hours for the computation to be done.

[23] Clause 6.3 of the collective says that flight attendants' "*duties, days off, leave and rest provisions*" are to be rostered in 28-day periods. These rosters are to be made available at least nine days prior to the commencement of the roster period.

[24] Clauses 6.4 through 6.8 provide a set of flight and duty time limitations with which the published rosters must comply. Flight attendants cannot be rostered to carry out duties for more hours in the roster period than these clauses allow for.

[25] For example, a flight attendant cannot be rostered for more than 100 flight hours in any 28-day fixed rostered, or more than 1000 flight hours in any 365 consecutive days. They must not be rostered in excess of 52 duty hours in 168 hours, or 100 duty hours in 14 days, and the maximum number of duty hours in a 28-day period is 185.

[26] There are a range of other similar parameters, each of which is framed as a restriction, which are complicated further by various limitations applying when a flight attendant is away from home base or if they are on international duties.

Days free of duty

[27] The Collective requires Air NZ to roster certain periods free of duty. These are described as days free of duty and I have referred to them as Off Days above. Of particular significance to the issue at hand, clause 6.37.16 of the Collective says:

“Flight Attendants shall be rostered 10 Days free of duty [...] at home base in each 28-day roster period. Of these duty-free periods, one period of 3 consecutive days and one period of 2 consecutive days off shall be rostered. The period comprising of 2 consecutive days rostered in each 28-day roster shall include a minimum of 60 hours free of duty. The period of 3 consecutive days will be deemed to have been achieved in any roster containing two weeks or more leave. At roster publication single days off will be rostered to have at least 36 hours free of duty.”

[28] This provision means that in each 28-day roster there must be at least 10 days free of duty at home base and requests for a specific day or days free of duty may be granted where possible by Air NZ.²

[29] However, Off Days are also subject to certain conditions, such as where trips exceed particular periods, and the Collective says that at the time of roster publication flight attendants must be rostered off for two full days every six and a half days.³

[30] Air NZ does not count Blank Days as part of the Off Days required by clause 6.37.16. This means that every roster in which a Blank Day appears also separately includes the 10 Off Days required by clause 6.37.16 of the Collective.

Rules framed in the negative

[31] The rules in the Collective governing rosters are largely framed in the negative. That is to say there are a multitude of prescribed of limits as to when a flight attendant may be required to work.

[32] Once each of these limitations on when a flight attendant may be required to work are taken into account, flight attendants may be required to work on any other day. In other words, if a day is not excluded by the rules of the Collective, it may be treated as a duty day for a Flight Attendant.

² Clause 6.37.32 of the Collective.

³ Clause 6.37.14 of the Collective.

[33] These limitations on when flight attendants may be required to work are said by the parties to reflect the agreement they have reached over multiple rounds of collective bargaining and various regulatory and other safety related considerations.

How Flight Attendants are called in on a Blank Day

[34] In 2021, and following consultation with E tū, Air NZ issued a circular which said that if work becomes available for a flight attendant on a Blank Day it can call the flight attendant to work at any time before 17:59 the day prior. After 18:00 on that day Air NZ may request that the flight attendant work that day, but such a request could be refused. Air NZ continues to apply the terms of the 2021 circular.

[35] Air NZ said that instances of Flight Attendants being called in to work on a Blank Day were rare.

[36] E tū said the circular was not of legal significance both because it was not part of the Collective and because it had expired. While Air NZ accepted the circular was not part of the Collective, it denied that it had expired.

[37] In any case, the parties have been acting in a manner consistent with the approach set out in the circular since 2021 and have had a range of discussions about its content and the use of Blank Days generally.

E tū's submissions

[38] E tū did not claim that Air NZ had failed to comply with the requirement in clause 6.37.16 of the Collective to provide 10 days free of duty at home base in each 28-day roster period. Rather, it's claim was that where a day is left blank in the roster, that day should also be treated as an Off Day.

[39] E tū's submissions placed particular emphasis on the union's view that Air NZ's practice of rostering Blank Days causes the company to breach rules that govern Off Days.

[40] E tū claimed that Air NZ's inclusion of Blank Days in rosters is not permitted by the Collective. It said that the Collective's non-inclusion of the concept of a Blank Day means that a day on which no work can be found for a flight attendant at the time the roster is created should be treated as an Off Day.

[41] E tū submitted that the labelling of particular days as Blank Days was in fact a mislabelling of days that should properly be regarded as Off Days.

[42] Examples were provided by Ms Giffen of the effect of what E tū said was the mislabelling of Off Days as Blank Days. Such examples included mandatory entitlements to time off before or after consecutive days which are Off Days, and other instances where it was said that the use of Blank Days circumvented protections for flight attendants that were provided for in the Collective.

[43] In each case these arguments presumed it was impermissible for a day to be labelled a Blank Day. In this way, the submission alleged an impact on corresponding rights under the Collective which may be correct if the union's view prevailed (i.e. that the use of Blank Days by Air NZ was impermissible).

[44] I have treated E tū's submissions in this regard as relevant to the extent that internal coherence within the Collective is an appropriate lens through which to consider whether a particular approach is what the parties intended. In other words, where Air NZ's use of Blank Days is inconsistent with other provisions of the Collective, this may create an argument regarding what the text taken as a whole means.

[45] However, I was not persuaded by the examples of apparent inconsistency provided in E tū's submissions, principally because I accepted Air NZ's evidence that Blank Days are treated as equivalent to a duty day for the purposes of other applicable rules and entitlements accruing to flight attendants under the Collective.

Air NZ's submissions

[46] Air NZ's central submission was that it complies with the Collective's rostering rules and requirements. It said that the inclusion of Blank Days in flight attendants' rosters did not violate any rule in the Collective and that it did not utilise the term to avoid any contractual requirement applicable to an Off Day.

[47] Air NZ further emphasised that a Blank Day is not inserted by function of its preference. Rather, the airline would prefer to have flight attendants perform work on all days on which they could be allocated duty under the Collective's rules.

[48] Blank Days, it was submitted, arise as a result of inefficiencies in the rostering system that mean a flight attendant cannot be assigned work on a particular day, despite

the fact that Air NZ would have been allowed under the Collective to have them work that day.

[49] Air NZ submitted that there is nothing in the Collective which requires all days in a given 28-day roster period to be filled with an identified activity and built on this submission by saying the requirements in the Collective to allow for Off Days was a specific contractual requirement. In this way, Off Duty days were said by Air NZ to not be a 'catch-all' term used in the Collective to describe any day in a roster which a flight attendant is not rostered duties or is not working.

[50] Mr Worthy said that the parties had agreed precise rules, and the Collective reflected an entitlement to only 10 Off Days. He further submitted that were the Authority to accept E tū's position that Blank Days should be considered Off Days, it would amount to adjusting the bargain between the parties rather than merely interpreting the Collective.

Analysis

[51] Given the complexity occasioned by the Collective's overlapping rostering rules, which are framed largely in the negative, it is helpful to bear in mind that the Authority's role in determining this matter was not to set the terms of the Collective, rather it was to interpret them. This means applying the principles set out in para [17] above.

[52] I find that, taken together, the provisions of Schedule 400 mean flight attendants can be rostered to work on any day, unless to do so would fall foul of the rules created by the Collective. Accordingly, when a day is not one on which a flight attendant cannot be rostered to work under the Collective, Air NZ is entitled to receive the benefit of the flight attendant's work on that day. It does not flow from this interpretation that if there is no work to perform on a particular day which could be a duty day, flight attendants become entitled to an additional Off Day.

[53] Although it is true that the concept of a Blank Day does not appear in the Collective, it is also true that that the Collective does not specifically deal with what should happen in instances where the flight attendant may be required under the Collective to be on duty, but where there is no work to do.

[54] Given the rostering rules are framed by excluding particular periods from being able to be duty days and allowing all other days to be days on which a flight attendant may be required to work, explicit language would be required to create an additional “day free of duty”. This is because the 10 “days free of duty” are a distinct component of the bargain between the parties and reading an additional day free of duty into the Collective would amount to altering a term of the agreement.

[55] The Collective does not provide that if no work is available to be performed by a flight attendant on a particular day, it is automatically treated as a “free of duty” day for the purposes of clause 6.37.16. Rather, “Days free of duty”, as a distinct component of the bargain between the parties, cannot be added to by the Collective merely being silent on the factual situation in question.

[56] The Collective does not provide an exhaustive description of how work must be performed on a given day that a flight attendant may be rostered to work. Accordingly, there will be times when Air NZ is entitled to prescribe how work is to be performed, provided that it may require the flight attendant to work on that day and that it is only requiring work that is otherwise consistent with the Collective.

[57] This reflects the practical realities associated with the relational nature of the agreement, including that parties often must engage in good faith to make a collective work in practice. I find Air NZ’s use of Blank Days is consistent with the Collective and is a means of managing a factual situation which is not well covered by the Collective’s terms.

[58] Importantly, as noted above, there is no suggestion that Air NZ is not otherwise complying with its obligations to pay correctly, provide Off Days in each 28-day roster or to provide flight attendants with the various types of leave to which they are entitled.

[59] Air NZ’s use of Blank Days is an exercise of permissible managerial discretion in respect of how work is performed by flight attendants on a day on which work may be required of them. As it happens, Air NZ largely allows flight attendants to stay home on such days.

[60] The correctness of this approach is illustrated by the fact that in place of including a Blank Day in a given roster, Air NZ could potentially require the flight

attendant to come to base to perform work (provided that any such work was consistent with the Collective and what the flight attendant is employed to do).

[61] Given Air NZ is entitled under the Collective to have the flight attendant work on the day in question, it is not an unreasonable approach to hold that day as open for an appropriate duty to be allocated, provided that it is not breaking any other rules of the Collective by doing so. This is essentially what a Blank Day is.

[62] As has been the case in the past and as is required by Collective through the agreement it contains to establish a rostering committee, the parties should continue to engage in good faith regarding how Blank Days occur in practice.

Outcome

[63] E tū's claim that a correct interpretation of the Collective would mean Blank Days should be treated as Off Duty days has not succeeded. Air NZ's approach of including Blank Days in flight attendants' rosters is consistent with the Collective.

Costs

[64] Given this case involved resolving a dispute about the application, interpretation or operation of a collective agreement, there is a presumption applied in the Authority's exercise of discretion regarding costs that the parties bear their own costs⁴.

Matthew Piper
Member of the Employment Relations Authority

⁴ <https://www.era.govt.nz/assets/Uploads/practice-direction-of-the-employment-relations-authority.pdf>.