

**IN THE EMPLOYMENT COURT
AUCKLAND**

**[2015] NZEmpC 75
EMPC 56/2015**

IN THE MATTER OF an application for a compliance order

BETWEEN NEW ZEALAND AIR LINE PILOTS'
ASSOCIATION INCORPORATED
Applicant

AND AIR NEW ZEALAND LIMITED
Respondent

ARC 6/14

IN THE MATTER OF an application for stay of proceedings and
execution

AND BETWEEN AIR NEW ZEALAND LIMITED
Applicant

AND NEW ZEALAND AIR LINE PILOTS'
ASSOCIATION INCORPORATED
Respondent

Hearing: by joint memorandum filed on 25 May 2015

Appearances: RE Harrison QC and R McCabe, counsel for NZALPA
J Miles QC and PA Caisley, counsel for Air New Zealand
Limited

Judgment: 26 May 2015

INTERLOCUTORY JUDGMENT OF CHIEF JUDGE G L COLGAN

[1] This interlocutory judgment deals with what is to occur to the judgment of this Court until Air New Zealand's appeal to the Court of Appeal is disposed of.

[2] The following orders are made by consent and on the following conditions:

- a. Air New Zealand Limited undertakes to prosecute its appeal to the Court of Appeal with expedition.
- b. Air New Zealand Limited undertakes that, in the event that its appeal to the Court of Appeal is unsuccessful (or is dismissed or lapses for want of prosecution) it will, with effect from 24 April 2013, calculate and pay back-pay to those employees who are or were, at any material time:
 - i B737 type First Officers and all Second Officers; and
 - ii members of NZALPA; and
 - iii covered by the terms of the Employment Court judgment dated 11 September 2014 in this matter.¹
- c. In the event that its appeal to the Court of Appeal is unsuccessful (or is dismissed or lapses for want of prosecution) Air New Zealand Limited undertakes that, in addition to making appropriate back-pay payments as referred to above, it shall also make a ‘special allowance’ payment to each pilot to whom it makes a back-pay payment.
 - i For the purposes of calculating the special allowance payment, the total amount of back-pay for each pilot will be deemed to have been earned in equal instalments over each pay period for which the back-pay payment is applicable. The special allowance calculation will then be based on five per cent compound interest from the date of assumed earning, through to the date of payment.
 - ii The back-pay amount to be used for this calculation is the total gross back-pay amount, less PAYE (ie the net payment).

¹ *New Zealand Air Line Pilots’ Association Incorporated v Air New Zealand Limited* [2014] NZEmpC 168.

- iii The special allowance will be paid in addition to, and at the same time as, the back-pay owing.
 - iv The special allowance payment will not be included in gross earnings for the purpose of calculating leave under the Holidays Act 2003, as it is not a payment that Air New Zealand Limited is required to make under the NZALPA collective employment agreement, and thus falls outside the definition of gross earnings.
- d. Air New Zealand Limited undertakes that the back-pay payment, and the special allowance payment referred to above shall be calculated and paid within 90 days of the Court of Appeal's decision (should that decision be in NZALPA's favour), or within 90 days of the appeal being abandoned or lapsing for want of prosecution.

[3] The foregoing undertakings and terms of settlement may be varied by the parties by mutual agreement.

[4] On the foregoing conditions, Air New Zealand Limited's application for stay of proceedings and, in particular, of execution of this Court's judgment dated 11 September 2014, is granted.

[5] The parties have agreed to bear their own costs in relation to these applications for compliance order and stay of execution.

GL Colgan
Chief Judge

Judgment signed at 9.45 am on Tuesday 26 May 2015