

## IN THE FAIR WORK COMMISSION

**Matter No:** B2024/91

**Applicant:** Network Aviation Pty Ltd

**Respondents:** Australian and International Pilots Association & Ors

### Outline of reply submissions for the Transport Workers' Union of Australia

#### **A. Introduction and overview**

1. These submissions reply to the submissions of Network of 6 May 2025 (**NS**). The TWU continues to rely on its submissions dated 6 May 2025 (**TS**).

#### **B. Factual matters**

2. NS [16], is incorrect insofar as it asserts that cll 5.1, 9.1.3 and 10.5.2 of the Draft Determination are agreed terms and, as such, must be included verbatim in the workplace determination.
3. As TS[11] – [15] explains, the Commission can and should adjust agreed terms to ensure conformance with the requirement in s 272(4) of the *Fair Work Act 2009* (Cth).

#### **C. Contested matters**

4. Network suggests that no changes are required to their workplace determination in light of the decision of the Full Court of the Federal Court in *Corporate Air Charter Pty Ltd v Australian Federation of Air Pilots*<sup>1</sup> due to monetary and non-monetary clauses contained in their proposed workplace determination.
5. On this flawed premise, the NS determine that it is appropriate to not reflect that reserve duty is a paid duty. NS [10] highlights that the Network Workplace determination distinguishes between 'duty period' and 'reserve period', where reserve period is not constituted as a paid duty. This is fundamentally inconsistent with *CAC v AFAP*.

#### *The BOOT*

6. NS [20] accepts that there is "potential" for proposed clause 10.5.2 of its workplace determination to raise a BOOT issue if a pilot's duty periods and reserve periods combined were to exceed 38 hours per week or 1976 hours over a 12 month period.

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1 [2025] FCAFC 4.

7. NS [21] and [22] assert that Network does not currently roster in excess of 1976 hours, and as such no BOOT issue arises. The assertion that no BOOT issue arises is incorrect and should be rejected.
8. The assertion that Network does not currently roster pilots in excess of 1976 hours does not obviate the need for the workplace determination to apply the *CAC v AFAP* decision and constitute reserve as paid duty.
9. A BOOT assessment is made at the time an agreement is made. The test is not confined to an employer's current operational or rostering practices, but to how the enterprise agreement could be applied to reasonably foreseeable employees.<sup>2</sup>
10. Network and the Unions' workplace determinations allow for a pilot to be rostered up to 7 reserve duties per 28-day roster period, where each reserve duty can be rostered up to a maximum of 12 hours. Over a 12-month period (being 13 roster periods) this would equate to 1096 hours of possible reserve duty hours that a pilot could be rostered.<sup>3</sup>
11. Network does not seek to compensate their employees for these additional hours spent on reserve under their workplace determination.
12. By Network's own BOOT assessment contained in the pay rate comparison,<sup>4</sup> a F100/E190 and A319/320 Entry Level First-Officers' salary is only 1.4% above the *Air Pilots Award* 2020.
13. In circumstance where some employees shall only receive a salary that is 1.4% above the Award on commencement of the workplace determination, the salary would be incapable of passing the BOOT if reserve duty were not classified as paid work. This concern extends to other employees at the various classification levels where their salaries range between 7.4% - 27.9% above the Award.
14. The most efficient way to alleviate this BOOT concern is to ensure that reserve is constituted as paid work.

#### *Reasonable Additional Hours*

15. Clause 10.5.2 of the proposed Workplace Determination reads:

*For the purposes of this Agreement, 'reasonable' shall mean the total of ordinary and additional hours worked each week and will not exceed ninety (90) hours of cumulative duty in any consecutive fourteen (14) days provided that over a 12 month period hours will not exceed 1976 hours (38 hours x 52 weeks).*

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<sup>2</sup> FWA s 193.

<sup>3</sup> TWU Workplace Determination cl 20.8

<sup>4</sup> NS at Annexure B.

*Hours for this purpose means the period from sign on to sign off for each duty (it does not include periods between sign on and sign off in a slip port).*

16. A pilot is not required to sign on and sign off for a reserve duty. As such, the reasonable additional hours at cl 10.5.2 does not include hours spent on reserve duty and is not considered paid work.
17. The TWU submits that cl 10.5.2 should be amended to read as follows:

*For the purposes of this Agreement, 'reasonable' shall mean the total of ordinary and additional hours worked each week and will not exceed ninety (90) hours of cumulative duty in any consecutive fourteen (14) days provided that over a 12 month period hours will not exceed 1976 hours (38 hours x 52 weeks).*  
~~*Hours for this purpose means the period from sign on to sign off for each duty (it does not include periods between sign on and sign off in a slip port).*~~

18. The averaging of ordinary hours over a 12 month period yields an unfair result for employees where monies owed to employees for work performed may be withheld over a 12 month period. The employer can also avoid paying monies owed to workers by smoothing out hours across the 12 month period.

#### **D. Conclusion**

19. The above amendments should be made to clause 10.5.2 in light of the analysis in *CAC v AFAP* and a Workplace Determination should be made consistent with the terms proposed by the TWU.

**P Boncardo**

**Counsel for the TWU**

**23 May 2025**