IN THE FAIR WORK COMMISSION

MATTER NO.:   **B2024/91**

PARTIES: **NETWORK AVIATION PTY LTD**

                        AUSTRALIAN FEDERATION OF AIR PILOTS

                        AUSTRALIAN AND INTERNATIONAL PILOTS ASSOCIATION

                        TRANSPORT WORKERS' UNION OF AUSTRALIA

AFAP'S SUPPLEMENTARY SUBMISSIONS

1. These submissions are filed by the AFAP pursuant to the directions made by the Commission on 14 April 2025, as varied on 17 April 2025. The AFAP also relies on:

   (a) the Fourth Witness Statement of Chris Aikens dated 5 May 2025 (**the Fourth Aikens Statement**); and

   (b) the Third Witness Statement of Stephen Maughan dated 5 May 2025 (**the Third Maughan Statement**).

2. At the final hearing on 3 October 2024 the AFAP relied upon three judgments of the South Australian Employment Tribunal/Court relating to a dispute between the AFAP and a company called Corporate Air Charter Pty Ltd (**the SA Judgments**):

   (a) *Australian Federation of Air Pilots v Corporate Air Charter Pty Ltd* [2023] SAET 63;

   (b) *Australian Federation of Air Pilots v Corporate Air Charter Pty Ltd* [2024] SAET 23; and

   (c) *Australian Federation of Air Pilots v Corporate Air Charter Pty Ltd* [2024] SAET 36.

3.	The result of the SA Judgments was that standby under the *Air Pilots Award 2020* (**the Award**) is to be treated as a period in which an employee is undertaking duties. It is uncontroversial that standby is another way to refer to reserve.

4.	The AFAP submitted at the final hearing that the SA Judgments are binding on Commission in this proceeding. The AFAP informed the Comision that the judgments were the subject of an appeal to the Federal Court of Australia.

5.	The AFAP submitted that the conclusion in the SA Judgments that standby/reserve under Award is to be treated as a period in which an employee is undertaking duties was material to the disposition of the dispute. This is because s.272(4) provides that the workplace determination must include terms that would be required to pass the better off overall test if it were an enterprise agreement.

6.	In summary, on 3 October 2024 the AFAP made two submissions.

7.	Firstly, the AFAP submitted that for the purposes of satisfying the requirement in s.272(4) clauses 5.1(4), 5.1(9), 9.1.3 and 10.5.5 in the AFAP WD ought to be amended as per the notes set out therein.

8.	In the alternative, the AFAP submitted that if the clauses are not amended in accordance with the abovementioned notes in the AFAP WD, then the treatment of standby/reserve as time worked is a matter that weighs in favour of making a workplace determination in the terms of the AFAP WD as the improvements in the AFAP WD will assist the WD in passing the BOOT.

9.	At the final hearing Network submitted that the SA judgments were wrong and not binding on the Commission.[1]

10.	On 4 April 2025, the Federal Court delivered its judgment in *Corporate Air Charter Pty Ltd v Australian Federation of Air Pilots* [2025] FCAFC 45 (**the Full Court Judgment**). The Full Court dismissed the appeal and held that standby is to be treated as a period in which an employee is undertaking duties: see the discussion at [14]-[48] and the ultimate conclusion at [49].

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[1] Network's reply submissions dated 23 September 2024, [57].

11.   As a result of the Full Court Judgment, Network's submission that the SA Judgments were not binding and incorrect falls away. There is now no credible submission that the Commission could not act in accordance with the Full Court Judgment.

12.   In the circumstances the Full Court Judgment must be followed by the Commission in determining the application before it. The Commission must now proceed on the basis that that standby/reserve under the Award is to be treated as a period in which an employee is undertaking duties. Significantly, this construction of standby/reserve under the Award must be applied when undertaking the BOOT.

13.   As to the impact of the holding that standby/reserve under the Award is to be treated as a period in which an employee is undertaking duties, the AFAP relies upon the Fourth Aikens Statement and the Third Maughan Statement.

14.   In his fourth statement Mr Aikens attaches and explains a further analysis that he has undertaken post the Full Court Judgment to assist the Commission. This analysis is based on data provided by Mr Maughan. In his analysis Mr Aikens compares the 2024 rates under the Award, with the addition of hours worked over and above a base 38 hour week by a Network pilot (which in accordance with the holding in the Full Court Judgment includes standby/reserve).

15.   The analysis illustrates that when standby/reserve is treated as time worked (which it must be for the purposes of applying the BOOT), this is a matter that weighs heavily in favour of making a workplace determination in the terms of the AFAP WD as the improvements in the AFAP WD will assist the workplace determination in passing the BOOT.

16.   The analysis establishes that Network's proposed wage rates are insufficient and in many instances significantly below the Award rates (or will likely fall below the Award rates in the future). It must be remembered that the rates of pay currently paid to Network's pilots have already fallen drastically below the Award, that is even before standby/reserve is taken into account. These existing deficiencies are exacerbated once standby/reserve is properly treated as time worked. The predicament that Network's pilots find themselves in requires correction by the Commission in the form of the workplace determination proposed by the AFAP.

17. The Commission should not be satisfied that Network's proposed WD will pass the BOOT. Mr Aiken's analysis weighs heavily in favour of making a workplace determination in the terms of the AFAP WD, which inter alia, includes appropriate wage rates and importantly back pay.

18. The AFAP submits that the Commission ought to make a workplace determination in the terms of the AFAP WD, with the addition of amendments to clauses 5.1(4), 5.1(9), 9.1.3 and 10.5.5 as per the notes set out therein in the AFAP WD. For the sake of clarity, given the gravity of the situation exposed by Mr Aiken's further analysis the AFAP no longer puts the submissions set out above at paragraphs 7 and 8 as alternatives and submits that merely amending clauses 5.1(4), 5.1(9), 9.1.3 and 10.5.5 would not result in an appropriate workplace determination that passes the BOOT.

5 May 2025

Y Bakri
Counsel for the AFAP

IN THE FAIR WORK COMMISSION

Matter No.:	B2024/91
Parties:	Network Aviation Pty Ltd
	Australian Federation of Air Pilots
	Australian and International Pilots Association
	Transport Workers' Union of Australia

FOURTH WITNESS STATEMENT OF CHRIS AIKENS

I, Chris Aikens, of 33 Montpelier Street, Bowen Hills, in the state of Queensland, say as follows:

1. I have made witness statements in this proceeding which are dated: 17 April 2024, 6 September 2024 and 23 September 2024 (**my Third Statement**). I continue to rely upon my previous statements.

2. I make this statement pursuant to the Fair Work Commission's directions dated 14 April 2025 as varied on 17 April 2025.

3. I make this statement from my own direct knowledge except where I say otherwise. Where I refer to information provided to me, I believe that information to be true and correct.

4. Attached to my Third Statement as attachment CA-19, was an excel spreadsheet which details the rates of pay of a Network Aviation Pilot compared to the rates payable under the *Air Pilots Award 2020 (*the Award). Attachment CA-19 compared the rates from 2019 (the last Network Aviation salary increase) until 2024 (the last increase to the rates under the Award).

5. Based on information provided to me by Stephen Maughan, the Chair of the AFAP Network Aviation Pilots Council, I have been able to now compare the 2024 rates under the Award, with the addition of hours worked over and above a base 38 hour week by a Network pilot. Attached to this statement and marked "**CA20**" is a copy of an excel spreadsheet that sets out my further analysis (**the Supplementary Spreadsheet**).

6.   Below, I explain the further analysis set out in the Supplementary Spreadsheet.

7.   Mr Maughan has informed me that he was able to extract averages of all duties undertaken by a Network Pilot. Included within these averages was the average hours worked when a pilot exceeded 38 hours per week.

8.   As noted in Stephen Maughan's witness statement dated 5 May 2025 he has prepared a bar graph which shows the percentage of pilots by fleet and rank that worked over 38 per week, which for all categories ranged between 15.8% and 21.1%.

9.   In the Supplementary Spreadsheet, the average hours worked for all pilots when exceeding 38 hours per week, based on Fleet and Rank over 2024 is set out in a column titled '**Average Additional Hours>38 (a)**' (Column D).

10. Stephen Maughan has also provided me with examples of an individual pilot who worked what could be viewed as an 'extreme' roster. In the Supplementary Spreadsheet this information is set out in a column titled '**Extreme Pilot Additional Hours (b)**' in the attached spreadsheet (Column E).

11. Based on those figures worked over and above 38 hours per week (referred to in paragraphs 9 and 10 above), I have then multiplied those additional hours by the 2024 hourly rate under the Award and then multiplied that figure by 52 weeks. This projection is therefore a 'what if' example of a pilot potentially working those additional hours for a year. These total figures are set out under the columns titled '**Average $ for (a)**' and '**Average $ for (b)'**, (columns G and H).

12. The applicable Award hourly rates set out in column C which is titled 'Hourly rate' are the total 2024 Award remuneration (in column A) divided by 1976 hours.

13. 1976 hours is arrived at by multiplying 38 hours by 52 weeks.

14. I then added the applicable Award rate of pay (column A), initially referenced in my Third Statement, to the '**Average $ for (a)**' and '**Average $ for (b)'**in columns G and H.

15. The total figures of adding the 2024 Award Rates to the two different examples of additional hours are headed **'Total Award $ for Example (a)' and 'Total Award $ for Example (b)'** in columns J and K. These total figures would be the Award rate for any pilot working X hours above a 38 hour week for a whole year. X being the average hours referred to in paragraphs 9 and 10 above.

16. I have then compared the Award figures inclusive of additional hours (columns J and K), to the salaries contained within the proposed workplace determination of Network Aviation. (columns A, E and I, below the grey bar (row 18) on the spreadsheet. The headings are '**Proposed Co rates on commencement**', '**Proposed Co rates 3Yrs**' and '**Proposed Co rates 5 yrs**'

17. The resultant figures in the Supplementary Spreadsheet in red indicate that the proposed salary of a Network Aviation Pilot still remains below the Award rate inclusive of additional hours.

18. The Supplementary Spreadsheet provides that those comparative figures which remain black (i.e. above the Award rate with additional hours) may well fall below the award rate should the Fair Work Commission grant Award increases in July 2025 of anything above 3%. As a reference I have added an example of a 3% increase to Award Rates in column N. That is 3% has been added to the figure where a pilot works above 38 hours (Column J).

19. Should a 3% Award increase be granted in July 2025 it is noted in the Supplementary Spreadsheet that, with the exception of an Airbus Captain, all other rank and fleets for both 'on commencement' and the '3yr' salary rates, as proposed by Network Aviation in their Workplace Determination, would be below the award rate.

20. It is also noted in the Supplementary Spreadsheet that with the inclusion of average additional hours over 38 hours (i.e.: not the 'extreme Pilot' averages) that ALL the Fokker rates of pay proposed by Network Aviation in their Workplace Determination, for both First Officers and Captains remain below Award rates.

21. It is also noted in the Supplementary Spreadsheet that the Low Hour Pilot rates for the Fokker and Airbus aircrafts, provided in the Network Aviation proposed Workplace Determination (clause 10.4), would be below the Award rate prior to the addition of any additional hours.

22. As part of the AFAP negotiating team throughout this process I can confirm that the intention behind the AFAP's proposed Workplace Determination was to ensure that what occurred during the life of the 2016 Enterprise Agreement would not occur again. Namely the slow erosion of salaries compared to the Award rate through the life of the Agreement. To the extent that by the time a new agreement was reached all pilots were below the Award rate. This was evidenced in the spreadsheet attached to my Third Statement as attachment CA-19.

23.   In addition, the intention behind the AFAP seeking backpay as part of our proposed Workplace Determination was to address amongst other things that, when including additional hours, that a Network pilot had actually been working below the award rate since 2020 and that Qantas had taken advantage of this fact despite recording significant profits over that time.

Chris Aikens

5 May 2025

"CA-20"

Current 2024 Award Rates*		Hourly rate	Average Additional Hours>38 (a)	Extreme Pilot additional Hrs (b)		Average $ for (a)	Average $ for (b)		Total Award $ for example (a)	Total Award $ for example (b)			July 2025 eg:3% Impact on Rates
FO Fokker													
$ 126,167.00		$ 63.80	5.7	21.2		$ 18,910.32	$ 70,333.12		$ 145,077.32	$ 196,500.12			$ 149,429.64
Capt Fokker													
$ 196,626.00		$ 97.50	5.9	21.1		$ 29,913.00	$ 106,977.00		$ 226,539.00	$ 303,603.00			$ 233,335.17
FO Airbus													
$ 131,151.00		$ 66.40	4.8	21.1		$ 16,573.44	$ 72,854.08		$ 147,724.44	$ 204,005.08			$ 152,156.17
Capt Airbus													
$ 200,410.00		$ 101.40	4.3	21.6		$ 22,673.04	$ 113,892.48		$ 223,083.04	$ 314,302.48			$ 229,775.53

* As per CA Third Statement 23rd Sept24

Proposed Co Rates 'on Commencement'	$ Difference for example (a)	$ Difference for example (b)		Proposed Co Rates 3yrs	$ Difference for example (a)	$ Difference for example (b)		Proposed Co Rates 5 yrs	$ Difference for example (a)	$ Difference for example (c)
FO Fokker				FO Fokker				FO Fokker		
$ 133,149.00	-$ 11,928.32	-$ 63,351.12		$ 137,149.00	-$ 7,928.32	-$ 59,351.12		$ 141,264.00	-$ 3,813.32	-$ 55,236.12
Capt Fokker				Capt Fokker				Capt Fokker		
$ 204,410.00	-$ 22,129.00	-$ 99,193.00		$ 210,552.00	-$ 15,987.00	-$ 93,051.00		$ 216,869.00	-$ 9,670.00	-$ 86,734.00
FO Airbus				FO Airbus				FO Airbus		
$ 145,965.00	-$ 1,759.44	-$ 58,040.08		$ 150,344.00	$ 2,619.56	-$ 53,661.08		$ 154,854.00	$ 7,129.56	-$ 49,151.08
Capt Airbus				Capt Airbus				Capt Airbus		
$ 225,234.00	$ 2,150.96	-$ 89,068.48		$ 231,991.00	$ 8,907.96	-$ 82,311.48		$ 238,951.00	$ 15,867.96	-$ 75,351.48

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Matter No.:   B2024/91

Parties: Network Aviation Pty Ltd

Australian Federation of Air Pilots

Australian and International Pilots Association

Transport Workers' Union of Australia

<u>THIRD WITNESS STATEMENT OF STEPHEN MAUGHAN</u>

I, Stephen Maughan, of 10 Waraker Way, Leeming, in the state of Western Australia, say as follows:

1. I have made witness statements in this proceeding which are dated: 6 September 2024 and 23 September 2024. I continue to rely upon my previous statements.

2. I make this statement pursuant to the Fair Work Commission's directions dated 14 April 2025 as varied on 17 April 2025.

3. I make this statement from my own direct knowledge except where I say otherwise. Where I refer to information provided to me, I believe that information to be true and correct.

4. I am the Chairperson of the Network Aviation Pilot Council, representing pilots employed by Network Aviation. I am also employed as a full-time Airbus A320 Captain. I've considerable experience and expertise in analysing roster data as I am a pilot representative on the roster working group.

5. In preparing this statement I have compiled and analysed duty data covering all fleet types (F100 and A320) and both ranks (First Officer and Captain) across the 2024 calendar year.

6. The data was extracted from official group pre-release rosters, provided directly to me in my capacity as a roster working group representative. It was processed using a custom-built program I developed to calculate weekly duty hours for each individual pilot.

7. The program identifies each pilot by name and automatically adds up their weekly hours by summing the duration of all scheduled duty events, including:

   a. Flights (line duties);

   b. Standby periods (reserves);

   c. Training and simulator duties;

   d. Duty Pilot allocations.

8. All periods that contribute zero duty were excluded from totals. These include:

   a. RDO – Rostered Day Off;

   b. AL – Annual Leave;

   c. SICK – Sick Leave;

   d. AVMED – Aviation Medical Leave;

   e. LWOP – Leave Without Pay;

   f. LSL – Long Service Leave;

   g. DIL – Day in Lieu;

   h. PL – Parental Leave;

   i. UA – Unavailable;

   j. SDO – Substitute Day Off; and

   k. CARERS – Carer's Leave.

9. The program treats ADAYs as valid duty days with a fixed 8.0-hour value. ADAYs are "Available Days" where the company can assign any duty at their discretion. At 1700 the day prior, a pilot may be rostered for any type of shift, of any length, the following day. For analysis, we apply 8.0 duty hours per ADAY.

10. All rosters were reviewed for formatting quirks, trailing summary lines, or corrupted rows. These rosters represent the company's planned duty structure, including reserve periods. If a pilot is activated from reserve, the finish time may be earlier or later than the planned end. Therefore, the presented figures reflect the company's intended or rostered workload rather than actual operational outcomes, which may vary. Where we encountered anomalies (e.g., weeks over 60 hours or totally blank entries), they were flagged or removed.

11. Attached to this statement and marked "**SM-4**" is a full-year table of weekly duty hours per pilot. It shows how hours fluctuated week-to-week across all pilots, ranks, and fleets.

12. As a gross error check to validate the logic, I modelled a typical 5-day working week. Pilots generally fly 3 line sectors and cover 2 reserve shifts per week. The average flight duty duration (across F100 and A320 fleets) was 6.71 hours. The average reserve duration was 8.98 hours. Together: ((3 × 6.71) + (2 × 8.98) = 40.39 hours).

13. This closely aligns with previous calculations regarding the 38-hour threshold, serving as a practical verification of the accuracy of our data.

14. In one typical roster (Roster 13 – A320 and F100 Captains), the data showed 437 individual flight duties and 216 reserve shifts. Reserves were labelled using formats like 4R-F-A3, 2R-F-A3, and so on. These are not flying sectors – they are reserve shifts rostered to provide operational contingency, typically covering for sickness, delays, maintenance issues, or unexpected disruptions.

15. Further to that, I analysed flight types by number. Around 62.4% of all duties were Scheduled (RPT) flights (flight numbers 1600–1789). This supports the position that Network Aviation is, in practice, a predominantly RPT flying operation.

16. I have prepared a bar graph showing the average number of pilots exceeding 38 hours per week, averaged over 52 weeks and all four rank/fleet groups. This graph is attached to this statement and marked "**SM-5**".

17. The weekly average was calculated using only valid weeks (excluding blank, zero, or corrupted data). Each week runs Monday to Sunday inclusive.

18. An example of an average working week in 2024 was seen in one A320 First Officer, whose weekly rostered hours averaged 42, consistently ranging between 40 and 45 hours.

19. On the other end of the scale, extreme working weeks include:

   a. ███████████, CPT, Week 18 (Roster 5) — 59+ hours across six straight duties;

   b. ███████████, CPT, Week 2 (Roster 1) — 59.1 hours;

   c. █████████████, CPT, Week 1 (Roster 1) — 59.1 hours.

20. Each of these instances was cross-verified against raw roster data and confirmed as accurate, despite representing exceptionally high workloads.

21. The figures were thoroughly reviewed to ensure all duty hours were captured and no over- or under-representation crept in.

22. This dataset has been relied upon by Mr. Aikens to conduct a detailed comparison between Network pilots' actual workloads and applicable award minimums, forming an empirical foundation for assessing compliance across average and extreme cases.

23. Additionally, the majority of pilots at Network Aviation have less than three years of service. I have modelled a service-length graph using internal data from a company join-date list and tallied where pilots fall across the proposed pay scale. This graph is attached to this statement and marked "**SM-6**". This analysis indicates that approximately 57% of pilots fall below the three-year threshold (Loyalty Bonus, LB1 under the company proposal). This confirms that the lowest proposed salary rates are the most accurate reference point when assessing BOOT compliance.

24. The regularity with which pilots exceed standard thresholds underscores that this occupation is far from the 'leisurely' characterization previously suggested. The pattern is consistent across all groups, and across the year.

Stephen Maughan
5 May 2025

SM-4

Name	Week 1	Week 2	Week 3	Week 4	Average	Week 5	Week 6	Week 7	Week 8	Week 9	Week 10	Week 11	Week 12	Week 13	Week 14	Week 15	Week 16	Week 17	Week 18	Week 19	Week 20	Week 21	Week 22	Week 23	Week 24	Week 25	Week 26	Week 27	Week 28	Week 29	Week 30	Week 31	Week 32	Week 33	Week 34	Week 35	Week 36	Week 37	Week 38	Week 39	Week 40	Week 41	Week 42	Week 43	Week 44	Week 45	Week 46	Week 47	Week 48	Week 49	Week 50	Week 51	Week 52	

Highest Week Duty:

Avg Fortnight (excl. blanks/X):

Avg of Weeks >38 hrs:

Avg Working Week (excl. blanks/X):

	Name	Week 1	Week 2	Week 3	Week 4	Average	Week 5	Week 6	Week 7	Week 8	Week 9	Week 10	Week 11	Week 12	Week 13	Week 14	Week 15	Week 16	Week 17	Week 18	Week 19	Week 20	Week 21	Week 22	Week 23	Week 24	Week 25	Week 26	Week 27	Week 28	Week 29	Week 30	Week 31	Week 32	Week 33	Week 34	Week 35	Week 36	Week 37	Week 38	Week 39	Week 40	Week 41	Week 42	Week 43	Week 44	Week 45	Week 46	Week 47	Week 48	Week 49	Week 50	Week 51	Week 52		

(The body of this spreadsheet consists of dense, small, partially illegible numeric data across all weekly columns and is not reliably legible for transcription.)

Summary labels (right-hand side):

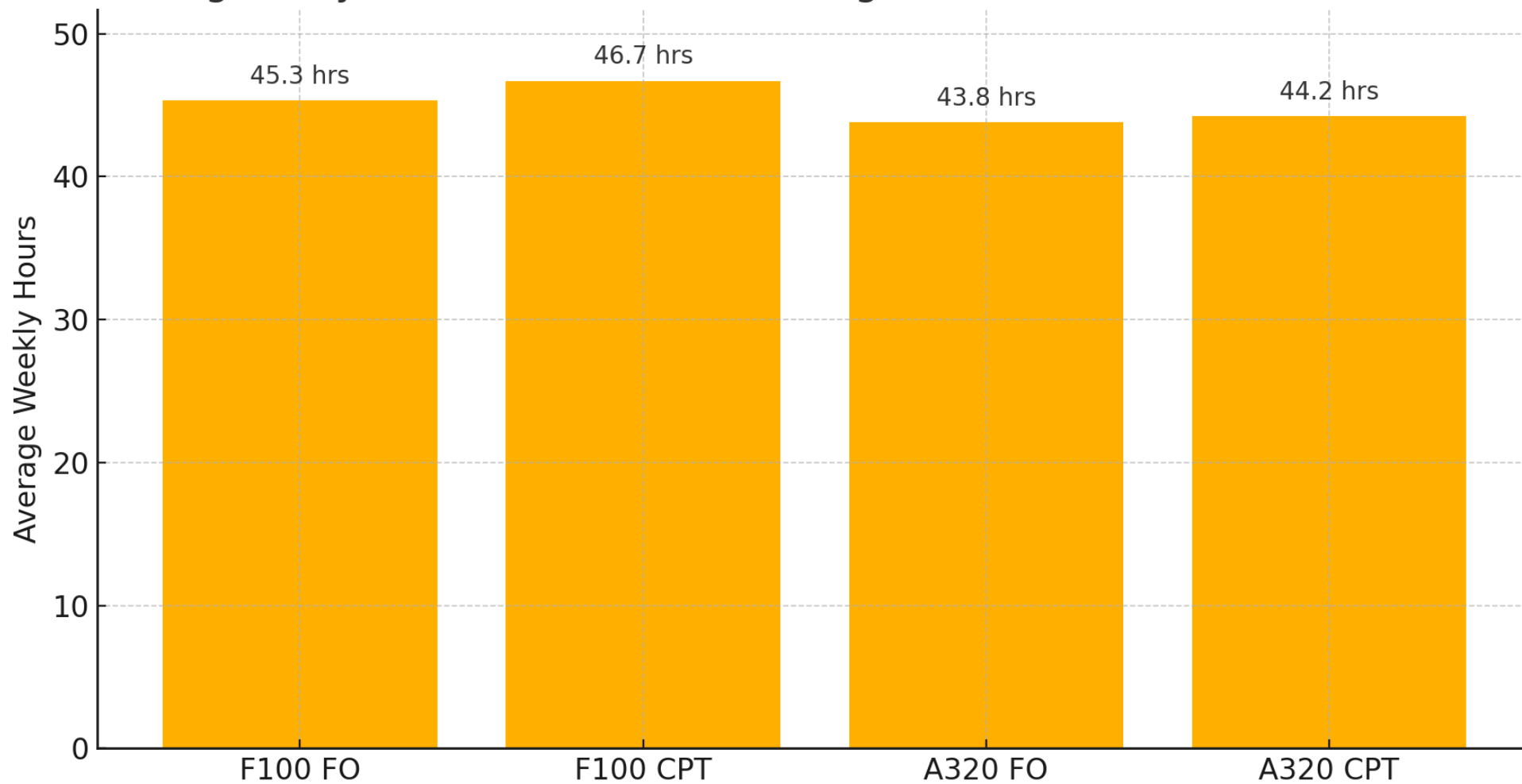| Label	Value
Highest Week Duty:	59.1
Avg Fortnight (excl. blanks/X):	69.4
Ave of Weeks >38 hrs:	42.8
Avg Working Week (excl. blanks/X):	34.7

SM-5

Average Duty Hours for Pilots Exceeding 38 Hours in a Given Week (2024)

SM-6

Pilot Years of Service Distribution (as of 24 April 2025)