

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 REPLY SUBMISSIONS

1. These submissions are filed by the AFAP pursuant to the directions made by the Commission on 8 May 2025. The AFAP also relies on:
 - (a) the Fifth Witness Statement of Chris Aikens dated 23 May 2025 (**the Fifth Aikens Statement**); and
 - (b) the Fourth Witness Statement of Stephen Maughan dated 23 May 2025 (**the Fourth Maughan Statement**).
2. These submissions reply to the Applicant's Supplementary Submissions Regarding BOOT dated 6 May 2025 (**ASS**). These submissions adopt the definitions used in AFAP's Supplementary Submissions dated 5 May 2025.
3. The ASS was filed pursuant to the directions made by the Commission on 14 April 2025 as varied on 17 April 2025. These directions invited the parties to file submissions, evidence and modelling of pay rates in respect of the BOOT and the draft workplace determinations.
4. The ASS fails to properly assist the Commission. It does not provide the Commission with any useful modelling of pay rates in respect of the BOOT and the draft workplace

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determinations. Network has evaded the modelling task that it was invited to undertake. Network has provided simplistic comparisons of: terms and conditions under the Award and Network's Draft Workplace Determination (see annexure A to the ASS), and pay rates for each of the classifications under the Award and Network's Draft Workplace Determination (see annexure B to the ASS).

5. Network has entirely evaded the task of analysing the implications of the Full Court Judgment on wage rates, as it has not compared the rates for each of the classifications under the Award inclusive of additional hours to the wage rates in Network's Draft Workplace Determination. Given the holding of the Full Court Judgement, namely that standby/reserve under the Award is to be treated as a period in which an employee is undertaking duties and thus entitled to payment, this is the modelling that is most useful to the Commission in applying the BOOT to the draft workplace determinations.
6. In contrast to the approach taken by Network, by Annexure CA20 the AFAP has provided the Commission with useful modelling which is critical to the application of the BOOT. This modelling establishes that when standby/reserve is taken into account 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).
7. It is not in dispute that the Commission must act in accordance with the Full Court Judgment. In ASS there is no submission made to the contrary.
8. At ASS[10]-[17] Network attempts to neutralise the implications of the Full Court Judgement by submitting that Network's Draft Workplace Determination distinguishes between duty periods and reserve periods. This submission entirely misses the point. When applying the BOOT the Commission must consider if the relevant employees would be better off overall if Network's Draft Workplace Determination applied to them than if the Award did. This requires applying the Award, including by treating standby/reserve under the Award as a period in which an employee is undertaking duties, and thus entitled to payment. It is of no moment that Network's Draft Workplace Determination treats reserve differently from the Award for the purposes of the BOOT.
9. At ASS[20] Network submits that a BOOT issue would "potentially" arise if by a combination of duty periods and reserve periods, Network's pilots were required to

work in excess of 1,976 hours in a 12 month period without the level of compensation provided for by the Award. The 1,976 hours is the maximum number of hours over a 12 month period under Network's Draft Workplace Determination. The problem with Network's submission is that it is irrelevant whether Network's Draft Workplace Determination permits such averaging, what is critical for the purposes of the BOOT is whether the Award does. As confirmed in the Full Court Judgment at [61]-[62], the Award does not permit calculating the maximum number of hours by averaging them over a 12 month period. The Court held at [62] that the maximum number of hours per week is 38 hours and standby/reserve hours worked beyond 38 hours in a week must be remunerated.

10. Accordingly, the fundamental problem with Network's submission that a BOOT issue would "potentially" arise if by a combination of duty periods and reserve periods, Network's pilots were required to work in excess of 1,976 hours in a 12 month period is that contrary to the Terms of clause 15.2 of the Award it has impermissibly averaged hours over a 12 month period when the correct period of time is seven days. The Commission must therefore, reject Network's submission and instead conclude that as shown by the modelling at Annexure CA20 (which is based on additional hours on a weekly basis) a significant BOOT issue does arise in respect of Network's Draft Workplace Determination.
11. Further to the above, the AFAP relies on the numerous significant problems and deficiencies with Network's analysis as identified in the Fifth Aikens Statement and the Fourth Maughan Statement.
12. In summary, the Commission should not be satisfied that Network's proposed WD will pass the BOOT. Mr Aiken's analysis at Annexure CA20 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.

23 May 2025

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