



26 September 2024

David Trevelyan
Chief Executive Officer
Chartair Ltd Pty
1 Murphy Road
Darwin Airport NT 0812

Sent via email only: ceo@chartair.com.au

Re – Chartair Pilots & Award Entitlements

Dear Mr Trevelyan,

The Australian Federation of Air Pilots (**AFAP**) write on behalf of AFAP members regarding their employment entitlements at Chartair Pty Ltd (**Chartair**).

Air Pilots Award 2020

1. Chartair and employed pilots are bound by the *Air Pilots Award 2020* (**the Award**), the *National Employment Standards (NES)*, *Fair Work Act 2009* (Cth) (**the FW Act**) and *Fair Work Regulations 2009* (Cth) (**the FW Regs**).
2. The AFAP has continued concerns, since raising matters in November 2022 of Chartair's approach to minimum conditions of the Award. More recently, pilots at Chartair reported concerns about the management of pay increases during July 2024.
3. The AFAP has outlined a number of matters below.

Award Salary (Addition to Salary)

4. As per clause 2 of the Award the definition of salary provides that.
salary means minimum salaries and additions to minimum salaries as prescribed by this award.
5. Chartair pilot's relative 'Salary' is provided for in Schedule A of the Award, noting the following components in Chartair below (however may not be limited to).
 - a. A.1.1 Aircraft classification and minimum salaries
 - b. A.1.3 Additions to minimum salary
 - c. A.1.4 (Instrument Flying Rating)
 - d. A.1.14 Salaries—general provisions

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Off-Setting Principles

6. The AFAP note that Chartair have referred to offsetting in recent correspondence to pilots, this common law off set may be a *potential* (emphasis added) defence to an underpayment of wages.
7. Pilots can recover their entitlements under the Award for up to 6 years under the FW Act, therefore the 12 months to make claims reference may have created some confusion to the pilot group.
8. **The AFAP seek Chartair update the pilot's group with correspondence that is not misleading to their workplace rights to recover claims outside of the 12 month period.**

Additions to Minimum Salary

9. In regard to clause A.1.3 Additions to minimum salary, provides A.1.3(a).
Flying a piston engine aircraft; A pilot flying a piston engine aircraft engaged on commuter operations will be paid an additional allowance of \$1890.04 per annum.
10. Chartair have not paid pilots the piston engine commuter allowance.
11. This is a matter relating to Award interpretation principles, which the AFAP remain of the view this incorporates all operations including piston engine aircraft (excludes some flight instruction).
12. In the case there is application is limited to some piston engine aircraft in Chartair, as per the position (in letter to the AFAP dated 6 December 2022) included that the original allowance applies to regular public transport services, and definition in the **1984 Pilots (General Aviation) Award**. To date Chartair has not paid the allowance to pilots operating on scheduled services,.
13. **Although we are not in agreement on scope of application, the AFAP seek Chartair confirm if it will provide the addition to salary payments to pilots undertaking scheduled services (or as per the 1984 Award definition it relies on in correspondence to the AFAP dated 6 December 2022), a step in good faith to mitigating the potential underpayments for Chartair piston engine pilots?**

Salaries - General Provisions

14. In regard to clause A.1.14 Salaries – general provisions there are two (2) rates of pay for this addition to salary pending the pilot responsibility.
15. The AFAP note that in A.1.14 the left hand column for an organisation of 10 pilots or less and the right hand column for 11 pilots or more, which includes a higher rate compared to the left hand column.
16. Chartair have informed pilots their minimum salary or 'Salary' as defined the Award only includes a responsibility of 10 pilots or less (i.e. Chartair supervisory/training pilots provided with only 5% addition to salary).
17. This approach to A.1.14 by Chartair results in reducing relative (i.e. training pilots) pilot's minimum salary by 1% (below-Award payment of approximately \$700 in some classifications). This underpayment needs to be addressed, also impacts payments of the legal minimum statutory superannuation.

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18. The AFAP seek Chartair confirm in writing that all the minimum salaries relating to A.1.14, (including recognising that Chartair pilots are responsible for more 11 pilots), therefore pay rates will be updated accordingly and backpay provided?

Award 10 Day Fortnight & FW Regs Payslips

19. The Award at clause 16.3 (rostering arrangements) provides that:

Each roster will specify in detail each employee's duty days and duty periods, stand-by duty, reserve duty days and periods free of duty and leave periods.

20. The Award at clause 15.7 Periods of duty provides that:

The weekly duty period will normally consist of 5 days' duty and 2 consecutive days free from all duty. By mutual agreement between the employee and the employer one day free of duty can be deferred. Where a day has been deferred a substitute day will be granted and taken within 28 days unless further deferred by mutual agreement in writing. For the purpose of rotating the roster one 2 day period may be reduced to single days in each 28 day cycle.

21. To avoid any doubt, the Award and the NES structure on a 38 per hour work week, or that is 76 hour fortnight including a minimum of 4 rostered days off in that period.

22. Many employers in general aviation provide a productivity payment (or overtime payment) for pilots to work on their rostered day off by mutual agreement that is more beneficial than 15.8 (f) of the Award and Award hourly rates, noting the following example:

- a. Payment for working on rostered day off as per 15.8 (f) of the Award at \$128.07 per occasion, and
- b. Payment above daily rate of pay in lieu of a substitute day off referred to in 15.8 (f).
- c. For example, a productivity day rate of \$500-\$1000 per shift to offset any potential underpayment (pending on the classification).

23. In the case of *SE Captain with IFR Command & Turbo Prop* (i.e. Caravan 208) the Salary as per the Award rate is \$80,814.67 per annum, or legal minimum payment of \$40.90 per/hour as per the NES 38 hour week.

24. As per 15.8 of the Award, the rates would require approximate \$310.84 per day worked plus the \$128.07, and therefore a total of \$438.91 payment for the classification in [23] above.

25. Chartair payments for the classification in [23] above, using the 14 day fortnight formula unlawfully results in a below-Award payment of \$222 (compared to \$310.84, at 28.5% reduction in rate of pay or 'wage theft' amount), and whereby providing the payment of \$128.07 resulting in a total of \$350.09 (compared to min Award of \$438.91).

26. This inherited legacy is unfortunate for Chartair management, as an administrative approach that results in obvious, undeniable errors and is indefensible.

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27. The *Fair Work Regulations 2009* (Cth) (**FW Regs**), at R 3.44 requires Chartair to address any errors known on employee records. Chartair payslips, employee records as per the FW Regs include the following errors that are your responsibility to address.
- d. States hourly rates where it appears to be referring to day rates,
 - e. Provide a day rate (noted as hourly rate) below the Award rates by dividing fortnight payment by 14 days (or hours), and
 - f. Include other leave and rates in forms of hourly/daily formulas.
- 28. The AFAP request Chartair respond with a plan to address these underpayment issues relating to day rate payment (and work on an RDO) that have exceeded a reasonable time to come up with a resolution. The response needs to consider following points.**
- 29. Agreement to backpay of identified underpayments of wages due to this pay rate for working on an RDO being below the Award rates (AFAP are willing to discuss an appropriate procedure).**
- 30. Changes to working on rostered days of by mutual agreement pay rates occur from now on to ensure no further payments below Award rates (*Optional may be to consider a potential appropriate productivity payments for all relative classifications*).**
- 31. Based on previous responses from Chartair, that there are no payments and only substitute days to pilots , the AFAP request a list of each RDO payments that have been made since raising matters in November 2022 (de-identified). The AFAP may seek to utilise powers under the FW Act to investigate these contraventions if there is no commitment in resolution.**
- 32. Addressing as per R.3.44 of the FW Regs regarding all identified errors in the employee records, including payslips that state employees worked for 14 hours or days, which neither are correct (AFAP may also be able to assist in an agreed procedure).**

Training Bonds

33. Training costs are the employer's responsibility as per clause 13.2 of the Award.
34. The AFAP has noted on multiple occasions that Chartair are now extended training bonds to areas outside the scope of clause 13.6 (b) of the Award, which limits the use of training bonds between the employer and employee to either class/type ratings and upgrade in command (upgrade in rank and status).
35. As per ss.325 and 326 of the FW Act, this right protects pilots from contracts with unreasonable payment and that are for the benefit of the employer to be enforceable, including those that are in contravention of the Award.
- 36. The AFAP seeks acknowledge of this written notice for Chartair to cease training bonds outside the scope of the Award, including unreasonable requests for payments related to these unreasonable training bonds.**

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Response

37. Response(s) sought can be responded to the AFAP via email to jason@afap.org.au in 14 days of this correspondence.

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Regards,

Jason Newell

AFAP Industrial Officer

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