

FAIR WORK COMMISSION

Matter no.: B2024/91

Re Application by: Application by Network Aviation Australia Pty Ltd

AIPA's supplementary submissions – The decision in *Corporate Air*

1. On 4 April 2025, a Full Court of the Federal Court handed down its decision in ***Corporate Air Charter Pty Ltd v Australian Federation of Air Pilots*** [2025] FCAFC 45. In short, the decision in *Corporate Air* affirmed three decisions of the **South Australian Employment Tribunal**, which, relevant to these proceedings, provided that rostered stand-by duty / reserve periods is paid work under the *Air Pilots Award 2020*.
2. Having regard to *Corporate Air*, the Full Bench in these proceedings directed the parties to file supplementary submissions, evidence and any modelling of pay rates regarding the BOOT and their respective draft workplace determinations.
3. In both the AFAP's primary and closing submissions at [116]-[117] and [177]-[178] respectively, it proposed amendments to its draft **Workplace Determination** on the basis that standby / reserve periods ought to be treated as the performance of duties (i.e. paid work). At [6] of its primary submissions, the AIPA outlined its support of the AFAP's claim regarding reserve duty, amongst others.
4. The AIPA has not resiled from this position and continues to support the AFAP's claim, including its analysis with respect to the BOOT, save that the AIPA contends (as it always has) that the determination ought to be made in the terms proposed in its WD. For the abundance of clarity, this also comprises necessary modifications to the equivalent clauses in the AIPA's WD to include the proposed amendments identified in the AFAP's supplementary submissions at [7] (which is identical to the position advanced by the AFAP at [116] and [177] of its primary and closing submissions respectively).
5. To that end, it should be borne in mind that Network's WD has been drafted on the basis that employees were *not* performing duties when undertaking reserve periods. So much is evident from each of the parties' WDs which, for example, define a reserve period as

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one in which employees are '*not performing duties*'.¹ Network doubles down on this proposition at [57] of its reply submissions, in which it suggested the three decisions of the SAET regarding reserve periods constituting the performance of duties, were wrong.

6. Plainly, that position is now untenable; the Commission must treat reserve periods as the work performed. In exercising its discretion, the Commission's task is to arrive at a '*fair and reasonable*' outcome. The decision in *Corporate Air* has removed any doubt (if there was any to begin with) that Network's proposed WD fails to achieve this end.
7. The effect of the parties' WDs is that reserve duties are, in effect, absorbed into the current rates of pay. That is, reserve periods do not attract payment on top of the current rates set out in the WDs, notwithstanding that those periods are to be treated as time worked. This renders Network's proposed WD manifestly inadequate (even more so), and weighs significantly further in favour of adopting the AIPA's WD.
8. Accordingly, the Commission ought to determine the matter in the terms proposed by the AIPA.

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¹ See each parties' WD at cl.5.1(9), except for the AFAP's WD which outlines a notation with proposed modifications.