



23 November 2022

Sarah Dewar
Chief Executive Officer
Chartair Ltd Pty
1 Murphy Road
Darwin Airport NT 0812

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

Re – Chartair Application of Air Pilots Award

Dear Ms Dewar,

The Australian Federation of Air Pilots ('AFAP') write to you on behalf of members employed at Chartair Pty Ltd ('Chartair').

The following matters are identified as potential contraventions to the *Air Pilots Award 2022* (the Award) and the *National Employment Standards* (NES). The AFAP seek compliance to the Award, and note application may also have occurred relative underpayments and/or reduction in employment conditions.

The AFAP raise matters in accordance with the Dispute Resolution clause 32 of the Award and seek to establish compliance to the Award and NES throughout this process.

The AFAP also bring to the attention of Chartair management representatives the application of **General Protections**, the protections regarding exercising workplace rights Part 3-1 of the FW Act include civil remedies and pecuniary penalties. The AFAP reserve right to seek proceedings in relative court should any retaliation to employment conditions or other matters contravene Part 3-1 of the Act.

The AFAP seek a response on the following areas of Award and NES compliance;

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Hours of Work

1. Chartair pilots have reported being required to work above the Award ordinary hours of work in excess of the ordinary hours of the Award clause 15.2, noting that ordinary hours of work must not average more than 38 hours per week.
2. Hours above the ordinary hours must therefore comply to the provisions of the NES and comply to FW Act s 62 (details) regarding additional hours, allowing the pilot to allow considerations.
3. Noting that authorised leave is considered working hours as per FW Act s62 for purpose of averaging of hours.
4. Chartair pilots have raised additional hours (or overtime) considerations with Chartair management to be informed the hours are non-negotiable, as being referred to averaging of ordinary hours or expected additional hours.
5. Chartair pilots are not able to identify any system, policy, or guidance (whether averaging of hours or otherwise) to allow a pilot to determine whether work hours form part of the pilots' ordinary hours, averaged hours or form are part of additional hours.
6. Pilots are not provided any additional remuneration for additional hours of work above ordinary hours.
7. Chartair pilots' payslips do not show actual hours worked and have not include reference to any additional hours worked or is there any form of communication on the averaging of hours.
8. Pilots have further then been required to utilise their accrued NES leave entitlements for any identified rostered hours even if the ordinary hours may be exhausted during an averaging period.

Resolution (Hours of Work)

9. The AFAP seek that Chartair response to its approach with compliance to the 15.2 of the Award and the application of ordinary hours of work, including approach to average hours and how pilots' considerations for additional hours are considered as per FW Act s 62.
10. The AFAP also seeks the current average hours figures you have for all Chartair pilots to be provided (of course de-identified).

Rostered Days Off Paid

11. Members have reported that additional RDOs provided in accordance with Award at times are paid out to the pilot by mutual agreement.
12. The payment by Chartair is calculated at one seventh (1/7th) of the pilot's weekly rate resulting in an underpayment.

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13. As rosters occur 5 days worked and 2 days rostered free, the 1/7th approach results in an underpayment of wages relative to amounts paid out. For example, \$52k p.a. is \$1k per week and \$200 per day (1/5th weekly pay), while at 1/7th is only a payment of \$142 (or 29% less).
14. Chartair pilots report payments are relative to a day, and do not reflection hours of the RDO worked.

Resolution (Rostered Days Off Paid)

15. Chartair to confirm it will address the above underpayments to all affected pilots, by paying the difference of the expected entitlement (as per day value of a day worked) and where relevant for all relevant hours worked.

Meal Breaks Issues

16. Chartair applied changes to the approach of a meal allowance in lieu of a meal breaks have impacted on the pilot group, as well as morale across the pilot group.
17. Pilots have complained about the lack of guidance, policy and support received regarding the reimbursement process since changes implemented have included inconsistent feedback, declined reimbursements (sometimes with no feedback or explanation) and conflict on what reimbursements will be approved.
18. Although the Award applies a meal or reimbursement, Chartair have provided limited feedback in 'how' a reimbursement applies to the pilots that have limited access to purchasing meals during their tour of duty. If a reimbursement is not available, Chartair require to provide a meal in accordance with 17.2 of the Award.
19. Chartair management has promoted reimbursement of fast-food options to the pilot group (i.e., Subway or Service Station foods) due to lack of options for pilots to purchase other meals on a tour of duty. The pilot group do not view this as an appropriate solution considering the dietary requirements and need for appropriate sustenance.

Resolution (Meal Breaks Issues)

- 16 Chartair to confirm its application 17.2 of the Award, including the consideration of how it manages the difficulties in the availability and lack of options for pilots to purchase a meal for reimbursement.
- 17 Review and reconsider further flexibility to current reimbursement approach, as well as providing structured guidance and/or policy to the pilot group to reduce barriers to reimbursement.
- 18 Consider alternate approach that may satisfy conditions of 17.2 of the Award.

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Allowance Rates

20. The AFAP note that the lawful rate for allowances for pilots is allocated under the Award.
21. Pilots state that Chartair has encouraged individuals to agree to lower rates of the allowance in the expense claim form as an option.
22. The understanding is that relative rates from the Australian Taxation Office (TD10) are being offered in place of the Award.

Resolution (Allowance Rates)

23. The AFAP seek confirmation from Chartair pilots will be provided with amounts in accordance with the Award.
24. Where Chartair to seek to offer an alternative rate to the Award, provide all relative details to the AFAP for review.

Temporary Change of Pilot Classification

25. The Award provides for payment at a higher classification for a minimum of one week as per clause 12.1 (a) and (b), and pilots have identified they are required for flying and training to undertake duties at higher classification at times.

Resolution (Temporary Change in Classification)

26. Chartair to confirm whether the application is being provided in accordance with 12.1 of the Award in all circumstances, including training at a higher classification.

Additions to Salary - Schedule A

27. Pilots are entitled to addition to salary as per Schedule A, including that the Piston engine aircraft attract an addition to salary as per A.1.3 (a) for general aviation and airlines.
28. The commuter services referenced is not specific or limited and refers to a pilot engaged on commuter services as part of an annual allowance, this annual salary component is relative to general aviation services a pilot is engaged with (not an allowance paid on occurrence but forms part of annual salary).

Resolution (Additions to Salary – Schedule A)

29. Chartair to confirm how it is applying the piston engine A.1.3 (a) addition to salary to the pilot group, including confirmation whether all piston engine pilots receive the allowance.

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Rostering Approach of the Award

30. Pilots have informed the AFAP that the online application to display rostering doesn't have a set publishing date, while the Award clause 16.2 requires a minimum of 7 days' notice for period of 14-day roster minimum – therefore establishing a minimum visible 21 days of rostered dates on publishing on a fortnightly basis.
31. The 21 days' notice supports the application of employment conditions in Part 3 of the Award (Hours of Work), this is also relative to the terms relative to entitlements and conditions.
32. Should the approach to rostering not provide the regular required notice, this may result in circumstances that Award conditions are not appropriately applied.

Resolution (Rostering Approach)

33. The AFAP seek clarification in how the Award application is carried out through the approach from Chartair by using a rostering application, including compliance to clause 16.2 of the Award.

The AFAP seek a response from Chartair regarding the Award and NES compliance matters by **close of business Friday 2 December 2022**.

The AFAP and our members reserve all rights on matters raised.

Should you have any queries or seek further discussion on matters raised in the correspondence please contact Jason Newell via email on jason.newell@afap.org.au .

Regards,



Jason Newell
Industrial Officer

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6 December 2022

By email: jason.newell@afap.org.au .

Mr Jason Newell
Industrial Officer
AFAP
Level 4, 132-136 Albert Rd
South Melbourne VIC 3205

Dear Mr Newell

Air Pilots Award 2020

I write in response to your letter of 23 November 2022.

While your letter indicates that a number of matters are raised pursuant to the dispute resolution clauses in the Air Pilots Award 2020, it is important to note that there have been no discussions between the employee (or employees) and the relevant supervisor as required by clause 32.2 and Chartair does not agree that your letter constitutes a discussion as required.

Turning to the specific matters raised in your letter, I provide the following information you have requested.

1. Hours of Work:

Chartair has reviewed average working hours and it does not appear that pilots are being rostered on to work in excess of an average of 38 hours per week, averaged over a 26-week period. Clause 8.3 of the standard Chartair employment contract states that any additional hours of work must first be approved by Chartair.

If the AFAP contends that pilots are working more than 38 hours per week, averaged over a 26-week period, we would be grateful if you could provide specific details including the name of the pilot and how the number of hours has been calculated.

We attach as Annexure 1 a schedule which records the average weekly hours of 43-line pilots for the period May 2022 to October 2022. None of the pilots average more than 38 hours a week.

2. Payment in Lieu of RDOs:

Chartair had, implemented a system whereby, by mutual agreement, pilots could elect to be paid a TIL day at a fixed rate

Chartair pilots are paid an annualised salary which is paid fortnightly based on a calculation as follows (using single engine pilots as an example):

$$\$51,033/365 = \$139.816 * 14 = \$1957.43$$

Where pilots take an RDO, they are paid their daily rate which in the above example is \$139.816.



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Pilots were offered by Chartair to be paid an additional payment of their daily rate instead of taking a substitute RDO.

Where pilots selected this option and had worked an RDO they would be paid their full weekly salary, plus the on-call allowance, plus a rate that represented 1/7th of their weekly pay. This system had been designed to suit employees who had requested the option to be paid although not all employees accepted this option. RDOs are not paid out frequently and it is estimated that fewer than 3 RDOs are paid out per year.

If the present arrangement is no longer agreed, Chartair can revert to issuing all pilots with substitute RDOs rather than being paid in lieu of RDOs at the agreed amount.

Chartair does not accept there is any underpayment as alleged in your letter because pilots requested to trade their RDOs for their daily rate for each RDO they elected to be paid for and were paid that amount. Where pilots did not request to be paid out at that rate, the pilots were afforded the RDO in accordance with the Award.

3. Meal Breaks

Clause 17.2 of the Award provides that employees can be reimbursed the full reasonable cost of a meal or provided with a meal of an acceptable standard.

The policy of Chartair has always been to provide meals in Darwin however it became apparent to Chartair that some pilots were missing out on meals due to being at other bases or due to flight delays. In these circumstances Chartair advised pilots they should purchase a meal of a reasonable cost and they would be reimbursed the cost of the meal. Chartair did not provide a maximum cost because the remote nature of the locations serviced by Chartair means that at some locations the food options available can be very limited and Chartair wanted to make clear to pilots that in those circumstances, they would be reimbursed even though food may come at a higher cost.

Chartair refused some reimbursements where pilots claimed foods not reasonably capable of constituting a meal during work hours such as uncooked meat items including mince and a rolled pork shoulder.

The pilot group raised concerns about the reimbursement policy being unclear and Chartair explained to the group that a ready to eat meal (and not meat or other ingredients) could be purchased up to a maximum cost of \$17 and would be reimbursed.

In addition, Chartair is now attempting to make arrangements to procure catering of lunch boxes that will be provided prior to flights and will ensure that pilots have access to food in remote locations.

4. Allowance Rates:

Chartair confirms that all allowances are being paid in accordance with the Award.

5. Temporary Change of Pilot Classification

Clause 12.1 applies where a pilot is required to carry out flying duties in a different category or classification of aircraft. Pilots employed by Chartair are paid the salary for the highest classification of aircraft flown.



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Clause 12.1 does not apply to require a higher rate of pay where a pilot is undergoing training in a different category or classification of aircraft.

6. Additions to Salary – Commuter Allowance

The Allowance under A1.3(a) applies to pilots flying a piston engine aircraft engaged on commuter operations. Commuter operations is not defined in the Award. You have indicated you are of the view that all aircraft operations are “commuter operations” but Chartair does not agree with your interpretation which is not supported by the history of the provision.

“Commuter operations” is no longer defined in the Award but was defined in the 1984 version of the Award as *‘flying performed under Regulation 201 and 203 of the Air Navigation Regulations and any variation operative thereto from time to time, including Supplementary Airline Licence Operations.’*

The effect of the definition was to recognise certain types of airline operations which in special circumstances were permitted to be provided by charter operators. Pilots flying these operations in circumstances where they were not entitled to an additional payment; for example, because the aircraft were only powered by piston engines, were nonetheless entitled to an additional payment. This was not because the term “commuter operations” is a reference to general aviation services or because all aircraft “commute”, but because the term referred to a specie of airline operations.

Were it otherwise, and “this annual salary component is relative to general aviation services a pilot is engaged with”, as you suggest, it would be unnecessary for the provision to refer at all to commuter operations.

7. Rostering

Fortnightly rosters are provided 7 days prior to the commencement of the roster as required by clause 16.2 of the Award.

Chartair takes compliance with the Award very seriously and takes steps above and beyond what is required by the Award to offer its pilots increased flexibility and enhanced working conditions including applying a flexible policy with respect to taking annual leave and paying a training captain allowance to all pilots undertaking ICUS supervision. Chartair will continue to work with its pilot group to ensure that they remain satisfied with their employment conditions.

I trust the above information answers your questions. Please do not hesitate to contact me if you would like to discuss any aspect of this letter in more detail.

Yours faithfully

Sarah Dewar



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Average Weekly Hours During the Period May 2022 to October 2022 for 43 Line Pilots:

Total Hours - May to Oct 2022	Average Weekly Hours (Total/26 weeks)
59.50	2.29
117.95	4.54
109.75	4.22
138.17	5.31
598.92	23.04
120.50	4.63
563.77	21.68
562.80	21.65
747.83	28.76
717.40	27.59
675.32	25.97
883.94	34.00
714.43	27.48
602.54	23.17
378.00	14.54
9.00	0.35
241.08	9.27
829.14	31.89
504.42	19.40
622.40	23.94
169.00	6.50
754.51	29.02
433.43	16.67
508.39	19.55
612.66	23.56
2.80	0.11
705.99	27.15
496.25	19.09
195.25	7.51
523.73	20.14
136.05	5.23
226.74	8.72
56.25	2.16
457.22	17.59
551.28	21.20
430.56	16.56
895.25	34.43
791.87	30.46
517.18	19.89
738.73	28.41
245.33	9.44
799.49	30.75
782.00	30.08



20 January 2023

Sarah Dewar
Chief Executive Officer
Chartair Ltd Pty
1 Murphy Road
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*Sent via email only: ceo@chartair.com.au
CC Michael Kohn Chief Pilot - ChiefPilot@chartair.com.au*

Re – Chartair Application of Air Pilots Award

Dear Ms Dewar,

The Australian Federation of Air Pilots ('AFAP') write to you on behalf of members, pilots employed at Chartair Pty Ltd ('Chartair') further to the correspondence from the AFAP on 23 November 2022 and the Chartair response 6 December 2022.

Dispute Resolution

1. The AFAP disagree with your correspondence that matters have not been discussed with the relevant supervisor, Mr Michael Kohn Head of Flying Operations.
2. The AFAP notes that prior to letter dated 23 November 2022 AFAP members, pilots have sought Mr Kohn's views on these same matters during period from late September to late November in 2022. This engagement did not resolve the matters.
3. Since the AFAP correspondence Chartair has provided further details regarding the views on these matters. Although there are still matters outstanding this progress is an example of a dispute process as intended, noting as the matters escalate the parties' positions become more detailed.
4. Noting your concerns, the AFAP have included Mr Kohn in this correspondence. The AFAP seek genuine resolution to the matters at hand, we welcome further discussions with Mr Kohn to resolve matters where possible.

The AFAP seek to engage with Chartair genuinely to resolve dispute matters relative to the application of the Air Pilots Award 2020 (the Award) and National Employment Standards (NES).

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Hours of Work

1. The Chartair response did not provide any explanation regarding compliance to clause 15.2 of the Award relating to Hours of Work, including details of the application of the ordinary hours of work, average hours and how additional hours are considered as per s62 of the Fair Work Act 2009 (Cth) (FW Act). A schedule of average pilot hours was provided to the AFAP, including a period over 26 weeks without explanation.
2. The AFAP seek clarification of the following relating to Hours of Work,
 - a. What process is undertaken to seek approval for additional hours?
 - b. What calculations and/or process was used to form the average hours provided?
 - c. Can you confirm the period(s) a pilot's average hours are calculated over? (i.e. for a 28 day period identify the dates of the period, as 2 Jan 2023 to 29 Jan 2023, inclusive)
 - d. What specific duty hours have been included to determine the average hours as provided in the schedule?
 - e. Please provide confirmation if this schedule includes authorised leave as part of the average hours, in accordance with the NES and FW Act s62(4)?

Payment in Lieu of RDOs

3. The AFAP raised the calculation relative to the minimum safety net of the Award which is issue at hand, payments made between Chartair and a pilot consistent to the Award are not an issue being raised however threats to detriment pilots were included in the response.
4. The AFAP disagree that the calculation provided in the response represents a payment for a day in lieu and it is clear this results in an underpayment by including all calendar days to decrease the entitlements by 29%. A a day in lieu (or rostered day off) owing to a pilot must be relative to the day of work at the salary rate.
5. The AFAP seek confirmation in writing Chartair will address the underpayments without delay related to the miscalculation by confirmation in writing to the AFAP and the pilot group the intention to reconcile all RDO (day in lieu) payments provided?

Meal Breaks

6. The Chartair response confirms to reimburse pilots as per clause 17.2 of the Award but then states the reimbursement is conditional (i.e. prepared meals only, limits of rates etc).

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7. The AFAP seek confirmation on the following regarding meal breaks as per 17.2 of the Award,
 - a. What authority (i.e. condition) does Chartair refuse to reimburse reasonable costs (including uncooked foods that can be prepared) purchased that form part of a meal prepared by a pilot for sustenance during a work day?
 - b. Whether amounts equivalent, or up to the meal rates allowances in the Award (i.e. clause 20.3 (v)) will be supported for reimbursement?
 - c. Whether there is any progress in providing meals to all pilots (in accordance with clause 17.2) as required by the Award or other strategies?
 - d. What strategies are being implemented to support pilots that have roster changes on short notice, that require them to plan a meal?

Additions to Salary – Schedule A

8. Regarding the clause A.1.3 (a) the AFAP sought confirmation of the application by Chartair.
9. The response referred to an outdated definition from the 1984 General Aviation Award, this definition was removed from the previous awards in general aviation a long time prior to award modernisation for those reasons.
10. Award interpretation requires consideration of the FW Act object, such as objective for enforceable terms and the application of the ordinary meaning, historic references can assist but are not always reliable or of assistance.
11. The AFAP again seek clarification on the following.
 - a. Confirmation of what pilot classification and details Chartair provide the addition to salary A.1.3(a) of the Award?
 - b. Where A.1.3(a) is not applied to a classification including a pilot flying piston engine, to provide clarification of the reasons.

Rostering

12. Feedback from the pilot group is inconsistent to the Chartair response.
13. The AFAP again seek clarification on the following.
 - a. Whether the electronic application is updated and finalised (published electronically) 7 days prior to the 14 day roster period?
 - b. Whether any changes to the roster after that time are notified to the pilots, and if so, how they are notified to ensure their entitlements under the Award?

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The AFAP genuinely seek to resolve matters and may seek the assistance of the Fair Work Commission as required.

The AFAP and members reserve right to address matters through alternate mechanisms including considerations of general protection matters due to threats of actions to the detriment to pilots, pursue relative monetary claims and relative pecuniary penalties for contraventions of the FW Act and Award where identified (up to 6 years from the contravention).

The AFAP seek a response from Chartair regarding these matters by **close of business Monday 30 January 2023**.

Should you have any queries or seek further discussion on matters raised in the correspondence please contact Jason Newell via email on jason.newell@afap.org.au .

Regards,

Jason Newell
Industrial Officer

AUSTRALIAN FEDERATION OF AIR PILOTS

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14 March 2023

Email: jason.newell@afap.org.au

Mr Jason Newell
Industrial Officer
AFAP
Level 4, 132-136 Albert Road
SOUTH MELBOURNE VIC 3205

Dear Mr Newell,
Air Pilots Award 2020

We write in response to your letters of 20 January 2023 and 10 March 2023. As we had previously advised, the Head of Flying Operations was on annual leave during February 2023 which has delayed the provision of this response.

Dispute Resolution

As I stated in my letter of 6 December 2022, Chartair does not agree that the matters raised in your 20 January 2023 letter were raised by 'pilots' with Capt. Kohn from late September to late November 2022.

The present position is that Chartair does not know which pilots claim to be affected by the issues you have raised or which pilots the AFAP is representing. Any dispute resolution process is required as a first step to involve discussions between the relevant employees and their direct supervisor. While the AFAP may be appointed to represent employees in those discussions, Chartair would need to be advised who is being represented. To date there have been no discussions and for the avoidance of doubt as I said in my letter of 6 December 2022 Chartair does not accept an exchange of correspondence between the AFAP and Chartair is a discussion for the purpose of clause 32.2.

Your letter of 20 January 2023 indicates the AFAP would welcome further discussions to attempt to resolve the issues raised by the AFAP and your letter of 10 March 2023 proposes Friday 17 March 2023 for this to occur. Chartair remains committed to resolving any issues raised by its pilots and would be pleased to arrange a time for a discussion between Captain Kohn and the employees who are represented by the AFAP, along with any AFAP representatives who wish to attend. The rostering of the pilots will need to be considered when scheduling a meeting and we do not anticipate a meeting will be able to be arranged for 17 March 2023. As a first step it would assist if you could identify the pilots the AFAP represents so that we can consider an appropriate time for a meeting.



Hours of Work

Your letter of 23 November 2022 alleged Chartair pilots were being required to work more than an average of 38 hours per week and requested the provision of the current average hours figures. The average hours figures were provided as requested. Those figures demonstrated that all pilots had worked less than an average of 38 ordinary hours per week. The calculations were conducted by taking the monthly hours worked by the pilots (for all duty including leave) and averaging the hours to obtain a weekly hour figure.

Chartair has previously requested the AFAP provide details to support this allegation including the name of the pilot and the number of hours worked. Those details have not been provided but the AFAP has instead asked for a significant amount of further information. If the AFAP has been advised that any pilots are working more than an average of 38 hours per week, please provide the name of the pilots and the period when it is alleged the average of 38 hours per week was exceeded. Chartair cannot engage in any discussion to attempt to resolve any dispute about averaging of hours without this information.

Payment in Lieu of RDOs

The Award provides that pilots shall not be required to work on a rostered duty-free day and that an employer can request a pilot to work on an RDO and if the pilot agrees to work they will be provided with a substitute RDO and an allowance of \$116.73 per day worked.

That is not the situation which has arisen on the very few instances where Chartair has paid out RDOs.

The situation at Chartair was that pilots had 'banked up' RDOs and approached Chartair to say they did not want to take those RDOs but would instead like the opportunity to be paid out an amount in lieu of the RDOs. Chartair offered the pilots the option to be paid 1/7th of their salary instead of taking the RDOs. The payment of 1/7th of a week's wages is in accordance with the payment allocated for all RDOs because as we have previously explained the Chartair accounting system divides the annual salary over 365 days to ensure pilots are correctly paid for all days of annual leave.

The pilots who requested payment to cash out banked RDOs agreed to be paid an additional 1/7th of their salary instead of taking these RDOs. There is nothing in the Award that deals with this situation and there is no underpayment in circumstances where there has been an agreement between the employee and the employer to pay out RDOs at this amount when the employees do not want to take the RDO.

Your letter of 10 March 2023 refers to underpayments in respect of annual leave days and rostered days off. To be clear, pilots are paid the annual salary as set out in the Award and are paid fortnightly. The amount paid for the fortnightly annual salary is the same whether pilots are on annual leave, working, or on RDOs. There is no underpayment as you allege. The only time when a daily rate was paid was on the 3 or so occasions per year when pilots requested that they be permitted to 'cash in' an RDO and agreed to accept an amount of 1/7 of their salary rather than taking an RDO. Your letter says the underpayments have been continuing for some time but as we stated in our letter of 6 December 2022, Chartair has



ceased this practice in response to you indicating pilots were not satisfied with the arrangements and pilots are now required to take their RDOs and are not permitted to swap RDOs for payment of an amount.

Meal Breaks

Clause 17.2 requires reimbursement of the reasonable cost of a meal. It does not require, as your letter suggests, unconditional payment of any costs a pilot alleges formed part of their meal that day. The purpose of the clause is to allow a pilot to eat a meal within a 5 hour period where there is not sufficient time available for them to leave work to obtain food. Requiring meals that are reimbursed are 'prepared meals' and not items such as 500g of raw mince or an uncooked pork shoulder is entirely consistent with the wording of the clause and its purpose.

In any event, Chartair is now providing meals rather than reimbursements.

Additions to Salary – Schedule A

Chartair does not conduct commuter operations and does not pay the allowance in Schedule A.1.3(a) to any pilots.

Rostering

Your letter again states pilots are providing feedback which is 'inconsistent' with the Chartair response but does not provide any details at all of the allegations made by the pilot group.

Rosters are provided 7 days prior to the commencement of the 14 day roster periods. If the AFAP contends this is not occurring could you please provide more information.

General Protections

Your letter makes the very serious allegation of threats of actions to the detriment to pilots and foreshadows a general protections claim. There have been no threats to the detriment of any pilots. We have indicated that if the pilots no longer agree to the payment of 1/7 of their weekly wage to 'cash out' RDOs, then Chartair will no longer offer this as an option. This is not a threat but a reflection of the fact that for their to be an agreement between Chartair and any pilot about the cashing out of an RDO, both parties need to agree.

Yours faithfully

A handwritten signature in black ink, appearing to read "Sarah Dewar", is written over a horizontal line.

Sarah Dewar CEO



5 July 2023

Luke Fisher
Chief Executive Officer
Chartair Ltd Pty
1 Murphy Road
Darwin Airport NT 0812

Sent via email only: ceo@chartair.com.au
CC Michael Kohn Chief Pilot - ChiefPilot@chartair.com.au

Re – Chartair Application of Air Pilots Award

Dear Mr Fisher,

The Australian Federation of Air Pilots ('AFAP') write to you regarding our members, pilots employed by Chartair Pty Ltd ('Chartair').

Identified Underpayments

The AFAP engaged in correspondence with Chartair since November 2022 regarding identified issues of the wages and conditions of Chartair pilots. These issues continue to be unresolved resulting in a growing quantum of underpayments to the pilot group and representing contraventions of the *Fair Work Act 2009* (Cth) (FW Act), *National Employment Standards* (NES) and the *Air Pilots Award 2020* (the Award). The recent 5.75% increase to the Award (as first full pay in July 2023) further escalates the quantum of the underpayments to the pilot group.

The most recent AFAP and Chartair correspondence in March 2023 did not see progress or resolution of these matters. Unfortunately, the Chartair response made demands that AFAP identify our membership, a request outside s.336 of the FW Act, General Protections. Furthermore, the Chartair responses made no offer to resolve matters.

The AFAP, are not aware if these issues have been shared with you since commencing in your role with Chartair, therefore we have summarised the issues below.

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Summary of Underpayments

Item	Contravention(s)	Summary	Underpayment Example
1. RDO/DIL Payment Rates	FW Act s.45 FW Act s.323(1) Award 33.7	Chartair have created inaccurate accounting procedures identifying that pilots are paid for 14 days per fortnight (thereby an equal rate per day for either a workday, or an RDO). This approach does not align to application of ordinary hours as per the FW Act, and results in accounting errors. Pilots have been paid out accrued RDOs (Days in Lieu) at a rate about 29% less than their Award entitlements.	Example salary \$100k p.a. Chartair payment for an RDO worked and instead of substitute day. <ul style="list-style-type: none"> • Chartair approach \$274 • Award (workday) \$384 • Example underpayment per occasion \$110.
2. Hours of Work	FW Act s.44 FW Act s.45 FW Act s.62 (NES) FW Act s.323(1) Award 15.2	Additional hours as per s.62 of the FW Act are worked by some pilots. Chartair has stated to the AFAP that pilots' ordinary hours are averaged over a 6 month period, however there was no observed structure to such arrangements. Pilots have not been provided with notice of additional hours in accordance with the NES, expected to work additional hours without compensation.	Example salary \$100,000 Pilot works 90 hours in fortnight (14 additional hours). Payment for additional hours at example rate is an additional payment of \$708 (for example fortnight).
3. Addition to Salary (Piston engine aircraft)	FW Act s.45 FW Act s.323(1) Award A.1.3(a)	The current rate required as part of minimum salary is \$1,821.73 p.a. Chartair argued that the operator does not conduct commuter operations in accordance with the Award – it is our view this is Chartair's core business is commuter operations.	Pilot underpayment per annum at current rate is \$1,821.73, thus pilots not paid allowance over multiple years will have a significant underpayment.

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4. Rostering	FW Act s.45 FW Act s.323(1) Award 15.8(f)(ii) Award 16.2	Issues of the Chartair rostering application system have been raised due to not providing the required 21 days planning ahead for the pilot group (i.e. 7 days notice of minimum 14 day roster). Additional issues occurred when roster changes not being transparent or published and conditions in the Award not being applied to the pilot group.	Pilot initially rostered on RDO due to shift change (within Award period) there is entitlement to additional payment - 15.8(f)(ii) of \$123.44 per occasion and substitute RDO.
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Resolving Underpayments

The AFAP has previously unsuccessfully attempted to work with Chartair to resolve these matters, while the quantum owed to the pilot group continues to grow. The AFAP, on behalf of members may alternately seek to resolve these matters as Fair Work Claims in accordance with the FW Act and/or seek pecuniary penalties for identified contraventions.

The AFAP remain open to exploring working with Chartair to resolve matters, however the expectation is for Chartair to identify and offer resolutions to the matters raised. Ideally should Chartair make a proposal that includes addressing matters moving forward, the AFAP would be willing to discuss with members a negotiated outcome to the retrospective underpayments.

The AFAP seek a response in 14 days of this letter. If required, the AFAP are prepared to meet with you to discuss any proposals, this can be arranged by contacting AFAP industrial Officer, Jason Newell via email on jason@afap.org.au.

All rights reserved.

Regards,

Jason Newell
Industrial Officer

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26 July 2023

Luke Fisher
Chief Executive Officer
Chartair Ltd Pty
1 Murphy Road
Darwin Airport NT 0812

Sent via email only: ceo@chartair.com.au
CC Michael Kohn Chief Pilot - ChiefPilot@chartair.com.au

Re – Chartair Application of Air Pilots Award

Dear Mr Fisher,

The Australian Federation of Air Pilots ('AFAP') write to Chartair Pty Ltd ('Chartair') further to the correspondence on 5 July 2023.

Background

The AFAP since raising matters in November 2022 has been observed Chartair's correspondence as deceitful as well as continuing to focus on artificial barriers to resolve these matters. The correspondence from Chartair on 14 March 2023 included significant backwards steps and additional concerns.

The AFAP correspondence on 5 July 2023, is providing an opportunity for new leadership in Chartair to distance itself from previous correspondence and behaviours, and that opportunity remains available. Chartair has been provided with significant time and opportunity to address contraventions of the *Air Pilots Award 2020* (the Award) and the *Fair Work Act 2009* (Cth) (FW Act), however future opportunities hereon in may be limited.

Dispute Resolution

1. Chartair's correspondence makes a range of incorrect claims and assertions regarding the *Air Pilots Award 2020* (the Award) Clause 32, Dispute Resolution. In short, the AFAP represent our members in accordance with the Award clause 32.7, which is to be interpreted in accordance with pilot's workplace rights of association under the FW Act. Chartair's claims and interpretation of the Award that the AFAP must identify individual union members encroaches on the pilot's rights and freedoms of association, an object of FW Act, and contravenes s.349(1) of the FW Act.

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2. Chartair responsibilities to address the Award contraventions require Chartair to make payment of their entitlements in full, as per s.323(1) of the FW Act. The FW Act is not limited to whether pilots are AFAP members or not.
3. Chartair position to create artificial barriers on matters, even refusing to acknowledge issues they have engaged in email correspondence on is imply absurd. This dishonesty intended to remove accountability displays an ongoing lack of intention to resolve these contraventions, and for Chartair to gain monetary benefits. The fact is Chartair's position on discussions with pilots under the dispute process is immaterial, as the AFAP (representative of our members) has engaged with Chartair leadership on these matters.
4. Chartair's demands to the AFAP, demonstrate ongoing intention to ignore rights of the pilot group, including freedom of association and rights to dispute matters under the Award. The pilot group are entitled to their rights under an industrial instrument and thereby prevented exercise of a workplace right as per s.341 and protection at s.340 of the FW Act.

Hours of Work

5. Chartair's correspondence on 6 December 2022 (and after this) to the AFAP claimed that pilots employed by the Chartair are working to arrangements of average hours of work and over a 26 week period. Regulation 3.35 of the *Fair Work Regulations 2009* (Cth) (FW Regs), requires Chartair to keep the record of the average hours agreement with each pilot in accordance with s.535 of the FW Act.
6. Chartair has continued to claim these arrangements exist, however AFAP members of the pilot group do not have an arrangement in place and therefore no records of such arrangement exist. Chartair appear to have provided false and misleading information to the AFAP in order to further deny pilots of their rights under the FW Act regarding payment for additional hours.
7. Chartair correspondence to the AFAP appears not to be genuine, if there was an error in the management of work hours then we encourage Chartair to be honest and work together with the AFAP and pilot group to resolve this. In consultation with our members the AFAP view Chartair has no average hours agreements with the pilot group (except for recently commenced pilots), and has implemented limited management of work hours in accordance with industrial requirements of the FW Act and Regs (i.e. we are not referring to the management of duty Civil Aviation Safety Authority legislation and regulations).
8. The lack of genuine systems of management of work hours therefore identifies the reasons pilots are not experiencing their rights under the National Employment Standards (NES) as per s.62 of the FW Act. The FW Act s.557A states a serious contravention is where an employer knowingly contravening provisions as part of a systematic pattern of conduct relating to one or more other persons.

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9. The additional concerns are that Chartair are effectively forcing pilots to work additional hours for no remuneration, this work provides the delivery of paid service contract arrangements (including government related contacts) where State/Territory and Commonwealth agreements/contracts require labour to be undertaken lawfully. Furthermore, regulation 3.34 of the FW Regs includes a requirement for all overtime (or additional hours) to be recorded, no pilots at Chartair are aware of any records of overtime or additional hours that have been managed or accessible.
10. Chartair's mismanagement of pilot's hours of work, records of ordinary hours, records of average of hours arrangements, and records of overtime/additional hours results in contraventions, including multiple areas of Part 3-6, Division 3 of the FW Regs. This also results in pilots using leave conditions, such as annual leave, personal/cares leave when all ordinary hours have been worked, noting leave hours are used in place of those ordinary hours. This practice prevents pilot to exercise rights, contravenes s.340 to protect workplace rights of the Award and NES.

Payment in Lieu of RDOs

11. The FW Act, regulations, modern awards and industrial instrument structure a system of ordinary hours in determining workplace entitlements in Australia. Chartair has attempted to remove the concept of ordinary hours in the workplace.
12. Chartair when alerted to these issues and resulting errors in payments did not respond or resolve matters. In fact, Chartair then responded to the AFAP it may be required to remove pilots access to single days of annual leave. The Award and the NES already allows for single days of annual leave, and this is a workplace right of the pilot group to exercise under the industrial instrument and the NES.
13. An additional premise to recognise is that the Award conditions cannot be contracted out (or diminished) by an employee or employer, these are safety net conditions that protect the employee. Chartair has developed a systemic process for pilots to contract out Award conditions (although it cannot lawfully do so), claim to offer beneficial conditions (already an Award/NES entitlements), for the purpose of removing system of ordinary hours required under the FW Act and Regs, to then calculate Days in Lieu payments less than a day of work.
14. Chartair have not argued to the AFAP that the pilots are paid less by this arrangement, and knowingly continued to allow pilots to be worse off than the Award. The Chartair leave policy, requires a pilot to sign a contract for access to annual leave Award and NES conditions, this process is documented evidence of coercion and contravenes s.343 of the FW Act, and therefore another General Protections matter occurring regularly in Chartair.
15. Chartair, after coercion of the pilot, will agree to apply a single annual leave day and then record these days as 1.4 days of leave taken (inconsistent to FW Regs). A positive is that pilots (appear to) receive

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228 hours of annual leave per annum or equivalent in Chartair, although there may not be evidence of this due to issues of the management and recording of ordinary hours. As previously mentioned above, if all ordinary hours are worked in a period then there is no requirement for a pilot to use any paid leave as will have option to work additional hours or be rostered off from duty.

16. Chartair may require time to work on strategies to adjust the systems developed supporting these contraventions, but there is nothing stopping Chartair to take action in addressing contraventions in this correspondence.

Additions to Salary – Schedule A.

17. Chartair correspondence in March 2023 claims it does not have any '*commuter operations*', as per Schedule A.1.3 (a) and therefore has refused to pay pilots this modern award provision, an addition to salary (part of minimum salary of safety net Award).
18. Chartair's provided feedback on 6 December 2022 indicates it has applied the historic *Pilots (General Aviation) Award* definition of 'commuter operations' as part of their award interpretation. This position therefore relies on historic regulations first introduced to Australian Air Navigation regulations in 1947, relative to the application to a particular species of airline operations as described in the correspondence. The convenience to Chartair by approaching the Award interpretation as linked to such historic terms (or regulations referring to species of operations no longer in existence), is that the provision can not be applied to any operators in Australia and no pilot would be entitled to the addition to salary in this modern award.
19. For background, the definition of 'commuter operations' was removed for the pre-modern Award (*Pilots (General Aviation) Award*) decades ago in the 1990s, as this definition was no longer relevant at that time. Over decades the terms, commuter operations, commuter services and commuter airlines have all attracted varying definitions and interpretations as regulations shifted, such these historic inconsistencies will not assist to resolve the interpretation of these terms.
20. The construction of the modern award in 2009 resulted in the addition to salary included in the *Air Pilots Award 2010* without a definition to commuter operations. The modern award review process resulted in the construction of the Air Pilots Award 2020, and the reference to commuter operations remained in clause A.1.3(a), without definition. The award construction is paramount to understand the interpretation of this provision, followed by the ordinary meaning and position (including its purpose within the modern award construction).
21. Clause A.1.3(a) reference to commuter operations, must be interpreted by its ordinary meaning broadly so it can operate as an addition to salary (its place in the Award), the purpose and the reason it

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has been included in the award construction. i.e. it is not a historic provision, but a provision in a modern award.

22. The ordinary meaning attracts recognition of pilots undertaking commuter operations, broadly this includes operations such as charter and regular scheduled services in general aviation and airlines (this therefore excludes other operations such as aerial work and flight instructing where not engaged in commuter operations or services). As an addition to salary the positioning of the provision in Schedule A and its purpose is to include an addition to the minimum salary for pilots working under specific conditions. Schedule A provides a range of differing conditions and tasking that attract additions to salary, i.e. aerial work may require an Airline Transport Pilots Licence, as at A.1.3(b), or flight instructors may have specific requirements or endorsements noted in A.1.7 to A.1.13.
23. The award construction, ordinary meaning and positing of commuter operations in A.1.3(a) can only be a broader interpretation. What both the AFAP and Chartair identify is that the terms '*commuter operations*' has some work to do. The provision however, first constructed in 2009, is not restricted to pilots employed under regulations during the 1980s and 90s not existent today— and therefore takes on a modern meaning that is currently applied in the industry.
24. Chartair's position to avoid any payment to any pilot regarding A.1.3(a), is consistent with the lack of action on other matters to knowingly avoid payment of entitlements.

Rosters

25. The key issues arrived for pilots due to a change of systems, as our members expected the Award conditions for rostering that provided 21 days visibility of a planned roster (every 14 days) as per clause 16.2 of the Award.
26. The AFAP sought for transparency of any roster changes within that required 21 day line of forward visibility in line with the Award, and there has been no updates on whether Chartair has been able to address the system to include roster changes/amendments.

General Protections Matters & Contraventions

27. The pilot group and the AFAP have made genuine attempts to bring issues to the attention of Chartair Chief Pilot and Chief Executive Officer (predecessor).
28. Chartair's performance has included the following concerning behaviours impacting on pilot's workplace rights,
 - a. Coercion of pilots to sign agreements to access singles days of annual leave,
 - b. Removed system of ordinary hours in order to reduce monetary payments to pilots (for days in lieu owed to pilot), resulting in payments less than the Award,

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- c. In 2022, Chartair leadership threatened a pilot with termination of employment and disciplinary action for raising genuine concerns about hours of work and additional hours,
- d. In correspondence in March 2023 demanded to know who are union members employed as pilots in Chartair,
- e. In same correspondence above, demanded to meet with only with union members,
- f. During January and March 2023, provided the AFAP dishonest responses regarding matters relating to hours of work and the workplace rights of the pilot group,
- g. As above, made claims of agreements on the averaging hours with pilots, although no agreement or documentation is in place as per the FW Act and Regulations, and
- h. Made artificial barriers to prevent the pilot’s representation to disputed issues regarding matters under the Award, an industrial instrument.

29. The above demonstrates an ongoing impact on the workplace rights of the pilot group is now well documented since 2022 throughout to 2023.

30. In summary, the table in [31] highlights contraventions many that continue to occur with no action since identified in November 2022, such ongoing activity is a concern and Chartair to knowingly continue raises queries whether they may be considered as serious contraventions as per s.557A of the FW Act. The list identifies a large number of contraventions, many noted may attract pecuniary penalties to individuals and corporations under the FW Act.

31. Table of Identified Contraventions

Air Pilots Award 2020	Fair Work Act 2009 (Cth)	Fair Work Regulations 2009 (Cth)
Clause 15.2 – Hours of Work Clause 15.8(f) – Substitute RDO(DIL) Clause 16.2 - Rostering Clause 23.4 – Annual Leave Entitlement Clause 23.6 – Annual Leave Taken Award clause 32 – Dispute Resolution Clause 33.7 – Payment on Termination	s.44 – Contravening the NES s.45 – Contravening an Award s.62 (NES) – Maximum Weekly Hours & Additional Hours s.88 (NES) – Taking annual leave s.90 (NES) – Annual Leave Payment s.323(1) – Payment of Entitlements in Full s.340 - Protection s.341 – A workplace right s.343 – Coercion s.349 (1) – Disclosure of Union Membership s.535 – Employee Records s.557A – Serious Contraventions	Part 3-6, Division 3 Reg 3.34 – Records of Additional Hours Reg 3.35 – Records of Average of Hours Agreements

AUSTRALIAN FEDERATION OF AIR PILOTS



Next Steps

As per the request in AFAP correspondence on 5 July 2023 seeking pathway forward to resolve these matters. The AFAP sought to provide Chartair an opportunity to propose resolutions, noting there is no appetite to pick up where Chartair left off in March 2023.

The AFAP seek a response by close of business Thursday, 3 August 2023. If you have any queries, please contact AFAP industrial Officer, Jason Newell via email on jason@afap.org.au.

All rights reserved.

Regards,

A handwritten signature in black ink, appearing to read 'J Newell', is positioned below the 'Regards,' text.

Jason Newell
Industrial Officer

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3 November 2023

Luke Fisher
Chief Executive Officer
Chartair Ltd Pty
1 Murphy Road
Darwin Airport NT 0812

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

Re – Chartair Application of Air Pilots Award

Dear Mr Fisher,

The Australian Federation of Air Pilots ('AFAP') write to you regarding our members, pilots employed by Chartair Pty Ltd ('Chartair'). Since November 2022, the AFAP has raised issues with Chartair regarding the application of the *Air Pilots Award 2020* (the Award) and the *National Employment Standards* (NES).

Chartair over an extended period of time have not responded to the AFAP. Chartair has chosen over an extend period of time to not address contraventions raised by the AFAP relating to underpayments of its employees.

The responsibility and considerations of serious contraventions, as per the *Fair Work Act 2009* (Cth) (FW Act) and *Fair Work Regulations 2009* (Cth) do consider how an employer has responded to matters raised. It is concerning contraventions may be an intentional issue within Chartair to keep monies the pilots are entitled to. Noting that s.557A(2) of the FW Act includes the following considerations,

In determining whether the person's conduct constituting the contravention of the provision was part of a systematic pattern of conduct, a court may have regard to:

(a) the number of contraventions (the relevant contraventions) of this Act committed by the person; and

(b) the period over which the relevant contraventions occurred; and

(c) the number of other persons affected by the relevant contraventions; and

(ca) the person's response, or failure to respond, to any complaints made about the relevant contraventions;

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Our members request an outcome that they are paid appropriately and in accordance with the Award and NES, and in summary you undertake steps to ensure no pilot is paid below the minimum safety of the Award, key areas that have been raised with you in previous correspondence include,

1. RDO/DIL Payment Rates
2. Hours of Work and Overtime Hours
3. Addition to Salary (Piston engine aircraft)
4. Rostering arrangements in accordance with the Award

Since the last AFAP correspondence an Industrial Magistrate decision ([AFAP v Corporate Air Charter Pty Ltd \[2023\] SAET 63 \(17 July 2023\)](#)) interprets the Award application relevant to matters within Chartair. This includes some key considerations I have summarised below,

- Hours of work for a pilot are 38 hours per week, unless there is an average hour's arrangement agreed between the employer and the pilot,
- The standby/reserve hours form part of the ordinary work hours of the Award (i.e. part of the 38 hour week above), and
- The hours worked above 38 hours per week (or average hours arrangement), or overtime hours are viewed to be paid on pro-rata basis (that is at usual hourly rate of the Award as there are no penalty rates).

The AFAP request a written response explaining how you intend to meet the industrial obligations of the Award and NES, within 7 days of this letter. Responses to be directed to AFAP industrial Officer, Jason Newell via email to jason@afap.org.au .

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Regards,



Jason Newell
Industrial Officer

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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

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.

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.

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.**

Response

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

All rights reserved.

Regards,

A handwritten signature in black ink, appearing to read 'J Newell', written in a cursive style.

Jason Newell

AFAP Industrial Officer

From: [Jason Newell](#)
To: [David Trevelyan](#)
Subject: RE: Commuter allowance
Date: Thursday, 23 January 2025 8:25:00 AM
Attachments: [20240926_AFAP_Chartair_PilotEntitlements.pdf](#)
[20240806_AFAP_Chartair_UPW_Offer.pdf](#)

Hi David,

The AFAP write on behalf of members further the correspondence provided on 26 Sept 2024.

Regarding the addition to salary A.1.3, the Chartair position provide in discussion was that it does not apply to any operations. While the AFAP view it will apply to the pilots operating piston engine aircraft.

A demand was also provided in respect to the entitlements for Cap Boschen on 6 August 2024, and is entitled to pursue these matters through a fair work claim (the appropriate jurisdiction will be a court of competent jurisdiction, i.e. magistrates court, federal family and circuit court).

As the parties remain apart on this matter without agreement regarding the application of A.1.3, I seek whether you would be in agreement to have this matter assisted by the Fair Work Commission, including agreement to have the FWC arbitrate the matter should it not be conciliated.

Please provide your response by close of business Thursday 30 January 2025.

Chartair further had offered to provide a response(s) regarding their position to other entitlements raised in the AFAP correspondence. No correspondence or emails have been received, please provide to AFAP via Jason@afap.org.au .

Regards,

Jason

Jason Newell
Senior Industrial Officer



AUSTRALIAN FEDERATION OF AIR PILOTS

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BOWEN HILLS, QLD 4006
T 03 9928 5737 M 0466 780 847

WWW.AFAP.ORG.AU

Foundation Member of IFALPA

From: David Trevelyan <ceo@chartair.com.au>
Sent: Wednesday, 20 November 2024 12:53 PM
To: Jason Newell <jason@afap.org.au>
Subject: Commuter allowance

David Trevelyan | CEO

Email: ceo@chartair.com.au | **Website:** www.chartair.com.au

Bookings: 1300 790 800 | **Phone:** +61 8 89 207 777 | **Mobile:** +61 410 484 755

Address: 1 Murphy Road Darwin Airport NT 0812 | Po Box 41170 Casuarina NT 0811

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From: [Jason Newell](#)
To: [David Trevelyan](#)
Subject: RE: Commuter allowance
Date: Thursday, 6 February 2025 3:57:00 PM

Hi David,

The AFAP do not support the position regarding your interpretation of the clause in question, there is no reference in this clause regarding the CASA regulations to limit the application in the manner you have referred to below. Noting the Award, a legislative instrument subject to the *Acts Interpretation Act 1901* (Cth) does refer to CASA legislation/regulations in specific clauses where it is relevant in the interpretation.

The AFAP do not intend to close this matter.

The AFAP considered parties coming up with an agreed plan, such as the no costs jurisdiction of the Fair Work Commission may be beneficial regarding the application of this salary component.

The AFAP may pursue matters in a court of competent jurisdiction (includes claims, interest, application for legal costs, and civil penalties), as per the outstanding payment demand the AFAP sent on behalf of our member that has not been addressed.

Prior to filing this matter, I can be available to have a discussion on the options moving forward.

Are you available to discuss further on Wed 12 Feb 2025, 11.00am AEST?

All rights reserved.

Regards,

Jason

From: David Trevelyan <ceo@chartair.com.au>
Sent: Thursday, 6 February 2025 2:58 PM
To: Jason Newell <jason@afap.org.au>
Subject: RE: Commuter allowance

Jason

I have reviewed this again. I understand you want to pursue this with Fair Work.

The issue is that it is clear that we do not operate 'commuter' type of aircraft. I have sent you an extract from the CASA database that shows while some of our competitors have a 'commuter' aircraft type, we do not.

It consumes too much time to take this incorrect claim to Fair Work, so I am not supportive of this. I hope you agree we can close this item.

Regards
David

David Trevelyan | CEO

Email: ceo@chartair.com.au | **Website:** www.chartair.com.au

Bookings: 1300 790 800 | **Phone:** +61 8 89 207 777 | **Mobile:** +61 410 484 755

Address: 1 Murphy Road Darwin Airport NT 0812 | Po Box 41170 Casuarina NT 0811

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From: Jason Newell <jason@afap.org.au>
Sent: Thursday, 23 January 2025 9:25 AM
To: David Trevelyan <ceo@chartair.com.au>
Subject: RE: Commuter allowance

Hi David,

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application of A.1.3, I seek whether you would be in agreement to have this matter assisted by the Fair Work Commission, including agreement to have the FWC arbitrate the matter should it not be conciliated.

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Regards,

Jason

Jason Newell
Senior Industrial Officer



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David Trevelyan | CEO

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