



**TRANSCRIPT OF PROCEEDINGS**

*Fair Work Act 2009*

**COMMISSIONER RYAN**

**C2022/7094**

**s.739 - Application to deal with a dispute**

**Captain Anthony Lucas  
and  
Qantas Airways Limited  
(C2022/7094)**

**Sydney**

**10.00 AM, MONDAY, 5 DECEMBER 2022**

PN1

THE COMMISSIONER: Good morning. I will take the appearances. For the applicant?

PN2

MR E DALGLEISH: Good morning, Commissioner, my name is Elliott Dalgleish and I'm happy to inform the Commission we have Captain Lucas here also.

PN3

THE COMMISSIONER: Thank you, Mr Dalgleish. And for the respondent?

PN4

MR J MORTON: Good morning, Commissioner, Jim Morton for the respondent, and we also have Mr Doug Alley online for the respondent.

PN5

THE COMMISSIONER: Thank you, Mr Morton. It appears from the materials that the parties have filed with my chambers that the parties have been unable to reach a resolution. Mr Dalgleish?

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MR DALGLEISH: That's a fair statement, Commissioner.

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THE COMMISSIONER: And it appears that both parties have filed proposed questions for determination, arbitration and proposed directions. I might just turn to the question first. Mr Dalgleish, the applicant's proposed question is that (audio malfunction) clause 19.1?

PN8

MR DALGLEISH: Yes, the applicant's proposed question was very simply put: 'What is the correct interpretation, application or operation of clause 19.1.2?' That's correct.

PN9

THE COMMISSIONER: Yes, but I don't think that really gets to - the nub of the dispute is whether really what is set out in the respondent's question, isn't it?

PN10

MR DALGLEISH: No.

PN11

THE COMMISSIONER: Because doesn't - - -

PN12

MR DALGLEISH: My answer to that would be 'No'. The respondent's question is nothing more than a loaded question with a presupposed answer and, unfortunately, the fallacy of the respondent's question relies upon the context for its effect. Now, there's no agreed facts here, and the other thing is I would hate to

think that the respondent's question sort of falsely presents a presupposition in the question as accepted by the facts and they haven't been determined.

PN13

THE COMMISSIONER: No, but I suppose where I'm coming from is in 19.1.2, if one was to - well, what's the correct interpretation of that, on one view, couldn't the answer simply be that (audio malfunction) it out, the SOT will be allocated to those particular lines or aircraft, unless there are insufficient bids and unless it's otherwise agreed for operational reasons, and the Association will not unreasonably withhold that agreement? That's at its very basic - - -

PN14

MR DALGLEISH: I suppose, Commissioner, if we wanted to, we could break down that 19.1.2 in the following way. We could say: 'If there are currently sufficient bids to the A380 from suitably qualified pilots currently employed by Qantas, then is it that the SOTs cannot be allocated by Qantas to the A380?' Then you could probably ask the question: 'Can Qantas only do so if there are insufficient bids, that is, allocation must be in accordance with seniority?' Then it would lead to: 'Alternatively, is the default position that seniority must apply to allocating second officer positions on the A380?'

PN15

Then what would be taken from those three questions, depending on how they are answered, is whether employer directive or employer exercise of discretion and the employer's action, meaning the managerial prerogative, is a lawful and reasonable obligation on individual pilots and air crew in all of the circumstances and would prevail over any agreement with or from the Association, which would then lead to whether the central impact of this provision is to reduce the discretion of Qantas management and increase the control that the employees' representatives have over our pilots' working lives by AIPA exercising its decision-making power and its discretion reasonably on behalf of its member and, if so, how.

PN16

Then that would give rise to the obligations in clause 19.1.2 and what they impose, if any, upon the Association in relation to the phrase 'otherwise agreed with the Association for operational reasons' and probably, (b), the phrase, 'The Association will not unreasonably withhold agreement.' Then, of course, the final question would be what effect does the word 'or' have on the first and second part of the clause?

PN17

If the respondent wants those questions answered, then there's seven questions that go with them because it's not as simple as the way the respondent has put it, and that's why I said that, unfortunately, when you ask a question the way the respondent has put it, that is just simply a loaded question and it has presupposed the answer, excluding or just limiting the way that you would view the operation of that clause and the particular answer or the information that's known by both sides in relation to such a clause, and I wouldn't like to get into presupposing the truth of the conclusion by - - -

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THE COMMISSIONER: I don't think anyone is presupposing anything.

PN19

MR DALGLEISH: The way the question is asked instead of supporting it through, well, the facts and, you know, what's actually before us.

PN20

THE COMMISSIONER: Yes, and that will all have to be determined along the way, but the first point is that they will be allocated by the company to those particular aircraft, unless there are insufficient bids. So that sets up that line of allocation and my understanding is that that's not in play here. What is in play is Qantas seeking to bump SOTs up the line to the A380 for operational reasons in agreement with the Association, so it comes into that second aspect 'or otherwise agreed' and that the Association will not unreasonably withhold its agreement. That is what was guiding my focus in trying to narrow the issues for determination through the arbitration.

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MR DALGLEISH: Unfortunately, it's not the respondent's application, it's Captain Lucas'.

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THE COMMISSIONER: Yes.

PN23

MR DALGLEISH: And so the way we have put the issue for determination in terms of the way you interpret or the way that clause could be applied or its operation is in its entirety. I know Qantas likes to focus on just the last sentence, but that's actually not how the clause operates at all and the clause must be read as a whole, and therefore there's a number of other aspects to that clause that need to be looked at in detail.

PN24

I don't want the matter to become incredibly complex, but the matter, when it's broken down, does have a degree of complexity that, if you just read the last sentence, may not really do it justice, to be honest.

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THE COMMISSIONER: No, but it may be that the answer becomes a 'No' because the operational reasons don't support bypassing the arrangements. I don't know, but I think - - -

PN26

MR DALGLEISH: Well, the operational reasons, just so we're all clear, have already been put in entirety to the Association. They don't get to come up with new operational reasons.

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THE COMMISSIONER: No.

PN28

MR DALGLEISH: They have already put in their entirety and they have been looked at extensively by the Association, and the clause doesn't just rely upon operational reasons, as much as Qantas would like it to be so.

PN29

THE COMMISSIONER: Okay, Mr Dalglish, we will go another way then. Is there a way to cut through this that brings - you said there could be seven questions, but you have also said you don't want to turn this into something bigger than it needs to be. What would be an alternative that sits between what is quite a generic issue for determination set out in the applicant's proposed question or issue vis-à-vis what the respondent has put?

PN30

MR DALGLEISH: Well, I would probably say, if I wanted to limit the seven that I put before, it would probably come down to really these two questions:

PN31

*If there are currently sufficient bids to the A380 from suitably qualified pilots currently employed by Qantas, is it that the SOTs cannot be allocated by Qantas to the A380?*

PN32

That's a fairly relevant question, and to get around presupposing anything, I would probably go:

PN33

*What obligations does clause 19.1.2 impose, if any, upon the Association in relation to the phrase 'otherwise agreed with the Association for operational reasons', and*

PN34

*(b) the phrase 'The Association will not unreasonably withhold its agreement'?*

PN35

I think the way those questions are phrased doesn't presuppose any position. It's up to the Commission to make that determination without sort of laying any blame or essentially sort of pointing to any sort of a question that might be considered somewhat loaded or presuppose the facts. That's the concern I have with the respondent's questions. It is presupposed there's agreed facts in relation to the question and there aren't. I say that because the conversations we have had with Qantas indicate that there seems to be some difficulty there.

PN36

I did flag the other day with Qantas that maybe they might want to consider a section 207 application if they considered that that clause was ambiguous or uncertain in some way and it wasn't resulting in the outcome that they were looking for. I haven't heard back from Qantas in relation to that and I did write, or one of the AIPA team wrote to the Commission in that respect. That hasn't been looked at by the Association and they don't meet until tomorrow. I'm fairly clear that the clause is not ambiguous and is not uncertain.

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THE COMMISSIONER: Well, it will be a matter for Qantas whether they wish to do a separate application under a different provision.

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MR DALGLEISH: That's right.

PN39

THE COMMISSIONER: Just coming back to - what do you say would be the proposed two questions?

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MR DALGLEISH: Could I write them to you and send them to your chambers by email? Would that be of assistance?

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THE COMMISSIONER: That may be of assistance.

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MR DALGLEISH: I'll just quickly do it right now.

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THE COMMISSIONER: If you could copy in Mr Morton as well.

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MR DALGLEISH: Yes. I'll send it to all.

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THE COMMISSIONER: How long do you think it will be, Mr Dalglish, before they come through?

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MR DALGLEISH: About 30 seconds.

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THE COMMISSIONER: We'll wait on the line then.

PN48

MR DALGLEISH: Yes. Nearly there. The main thing is I've just got to find everyone, so I'm just locating everybody. I'll send it on the back of Mr Morton's email, if that's okay?

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THE COMMISSIONER: Very well.

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MR DALGLEISH: I've sent that through, Commissioner. You should be receiving it shortly.

PN51

THE COMMISSIONER: Thank you, Mr Dalglish. My chambers has received that. Mr Morton, have you received that?

PN52

MR MORTON: Yes, I have, Commissioner.

PN53

THE COMMISSIONER: So they are the questions, Mr Dalglish, that the applicant seeks to have resolved through arbitration of the dispute?

PN54

MR DALGLEISH: Yes, please, except that in question 1, I've just made an error. If you have a look at the last five words 'by the Qantas to the A380', we probably should get rid of 'the', so 'by Qantas to the A380'.

PN55

THE COMMISSIONER: Yes.

PN56

MR DALGLEISH: My apologies.

PN57

THE COMMISSIONER: Mr Morton, what do you say about those proposed questions?

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MR MORTON: Commissioner, look, the first question can probably stand. I'll take a step back. Our proposed question really was, 'For the purpose of clause 19.1.2' - et cetera, et cetera. We saw our question really as subsuming the applicant's question. Really, to approach our question, you really have to go through what is the correct interpretation, what is the correct approach to clause 19.1.2. So, really, our question assumes that you go through that process, you work out how clause 19.1.2 operates and then you apply that clause to the facts at hand. I think from our point of view, we don't want to be engaged in an abstract exercise about how the clause operates; we want to resolve a dispute here.

PN59

Really, at the end of the day, we say we need to resolve whether AIPA is unreasonably withholding agreement here. Going ahead, we see that's what we need to resolve this dispute.

PN60

Having said that, probably question 1, if we want to break down the approach to clause 19.1.2, can probably stand as a question. With respect to question 2, I don't think it's going to be particularly helpful to break down the clause into particular phrases and say, 'What does this phrase mean, what does this phrase mean?' I think we need to approach clause 19.1.2 as a whole and then, having approached it as a whole, then we need to take that step further for the Commission to arbitrate and determine, having determined how clause 19.1.2 operates, whether the Association is now or has unreasonably withheld its agreement. That's what we need to resolve the dispute.

PN61

So, I think question 1 can stand. I think we need our proposed question - - -

PN62

THE COMMISSIONER: Mr Morton, sorry to cut in, but what if your question became the third question?

PN63

MR MORTON: Look, yes, I think that's right. Our question could become the third question. As I said, I'm content with 1. I'm just not sure whether breaking clause 19.1.2 down into those, you know, separate phrases is going to be a particularly helpful exercise. Yes, I guess that's my concern. We can probably work with it.

PN64

In some ways, you know, we may be better off having a conjunction - two questions - the question as proposed by the applicant:

PN65

*What is the correct interpretation, application or operation of clause 19.1.2?*

PN66

and then the second question:

PN67

*For the purpose of the clause, having determined the correct interpretation, application or operation, has the Association unreasonably withheld its agreement?*

PN68

In one way, you would just accept the two questions as originally submitted.

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THE COMMISSIONER: Yes, that's perhaps another way of doing it. Mr Dalgleish, what do you say about Mr Morton's proposal then that the original questions submitted by the parties essentially becomes question 1 and question 2?

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MR DALGLEISH: Is Mr Morton talking about the original question by both parties?

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THE COMMISSIONER: Yes.

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MR MORTON: I am.

PN73

MR DALGLEISH: I think the better way to do it was where we were headed just before that suggestion was made, which was that the questions we put forward today, 1 and 2, and then we add Mr Morton's question as 3, because that follows nicely from, you know, how you answer 1 and 2 determines 3. I would be happy with that, if that's okay with the Qantas Group. I think that's a better way of doing it because the way I'd written question 1 was really on the basis of seven questions



that got to one. My view would be questions 1 and 2 as proposed by the applicant today joined with question 3 as proposed by the respondent.

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THE COMMISSIONER: So 1 and 2 of yours today plus the Qantas question being 3?

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MR DALGLEISH: I think that's right because, depending on how you answer 1 and 2, it arrives at the answer to 3.

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THE COMMISSIONER: It may be that - I'm just hypothesising here - it may be that potentially question 3 needs to be answered or doesn't need to be answered, depending on the answers to perhaps question 2.

PN77

MR DALGLEISH: Quite right. You may not even get to question 2 if the answer to question 1 is answered in a particular way. So, you're quite right, 1 will determine whether you get to 2, and then the way you understand those phrases in 2 may well get to 3 or it may not. So, it might stop at 1, it might stop at 2, or it might stop at 3, depending on the process that someone takes in their reasoning.

PN78

THE COMMISSIONER: Yes, if the parties can just give me one moment, I'm just going to see if I can consolidate. There might just need to be some variation or finessing of the questions to align them.

PN79

So, if we take those first two question of the applicant with the 'the' removed, I've then added the third question, which is your proposed question, Mr Morton, but I've reversed it so it would read:

PN80

*In relation to Qantas' proposed allocation of SOTs to the A380:*

PN81

*(a) has the Association unreasonably withheld its agreement; and/or*

PN82

*(b) is the Association now unreasonably withholding its agreement?*

PN83

MR MORTON: Very good on question 3, Commissioner. I do have one issue I may want to raise with question 2 just as an observation.

PN84

THE COMMISSIONER: Yes?

PN85

MR MORTON: I think the better approach on question 2 would be that it would just be the part (b), if we're going to go down that path:

PN86

*What obligations does clause 19.1.2 impose, if any, upon the Association in relation to the phrase 'The Association will not unreasonably withhold agreement'?*

PN87

I say that because, looking at part (a) of the question, the phrase 'otherwise agreed with the Association for operational reasons', I think that will fall to be considered under question 1. Question 1:

PN88

*If there are currently sufficient bids for the A380 from suitably qualified pilots currently employed by Qantas, then is it that SOTs cannot be allocated by Qantas to the A380?*

PN89

I think that necessarily calls up the question, when you look at the phrasing in 19.1.2:

PN90

*A SOT will be allocated to those aircraft types unless there are insufficient bids from suitably qualified pilots employed prior to the commencement of clause 32.7 or otherwise agreed with the Association.*

PN91

So, I think question 2(a) really falls to be considered as part of question 1.

PN92

THE COMMISSIONER: Mr Dalgleish?

PN93

MR DALGLEISH: No, I'd prefer to leave it as it is, and there are some reasons why I would prefer to leave it as it is because Mr Morton is presupposing that the operational reasons are just Qantas' and that's not the way the clause is read; it's not the construction we have. It's not just about Qantas' operational reasons, it's also about the Association's decision-making in relation to its Rules of Association and those operational reasons. That is quite critical, the phrase 'otherwise agreed'. That has a particular meaning, 'otherwise agreed', which is very distinct from 'will not unreasonably withhold'.

PN94

We see the clause as, in a sense, in four parts. We've got 'will not unreasonably withhold', so I can understand Mr Morton wanting that answered in part 2. However, the phrase 'otherwise agreed with' is very important in understanding how the clause works, apart from, of course, the first part of the clause, which is in terms of sufficient or insufficient bids from suitably qualified pilots. Then, of course, without having to step it through, the word 'or' will come into play there with the condition precedent of part 1 and part 2 of the clause.

PN95

The short answer to that question, Commissioner, is, no, we want:

PN96

*What obligations does 19.1.2 impose, if any, upon the Association in relation to the phrase 'otherwise agreed with'?*

PN97

Because we think that is very important to the Association for our operational reasons and, (b), the phrase:

PN98

*The Association will not unreasonably withhold agreement.*

PN99

I will just come back to - this is not going to be decided within the context of an academic exercise that's put by Mr Morton or some sort of factual vacuum. This has a distinct set of facts that sit both with the Association and with Qantas, so I don't know whether there's a jurisdictional issue that Mr Morton was hoping to raise there, but that would certainly be contested by us, obviously. We don't think there's any jurisdictional issue that arises here. It's a clear set of facts that has occurred on both sides, and whether anyone has the same understanding of those facts is a different issue, but we would like the questions to sit as 1 and 2 as proposed by us with the word 'the' removed and what you proposed before. I think you expressed it 'in relation to Qantas' proposed allocation of SOTs to the A380' and then you had question 3(a):

PN100

*Has the Association unreasonably withheld its agreement; and/or*

PN101

*(b) is the Association now unreasonably withholding its agreement?*

PN102

As I understood you, Commissioner.

PN103

THE COMMISSIONER: Well, I think, Mr Morton, if (a) is subsumed as part of question 1, then that will come out in the course.

PN104

MR MORTON: Yes, well, I think it will come out in the course, Commissioner. I'm not sure even grammatically it works out well:

PN105

*What obligations does clause 19.1.2 impose upon the Association in relation to the phrase 'unless otherwise agreed with the Association'?*

PN106

I do agree with you, Commissioner, it will come out in proceedings. I think we just say - in relation to question 1, I think we will say the answer will be there that we can't allocate where there are sufficient bids from suitably qualified pilots for the A380 unless we agree with the Association for operational reasons. So, I think 2(a) will necessarily form part of the consideration for question 1. However,

if the Commission is minded to do it as two questions, you know, we can do it that way and I'm sure it will come out in the course of proceedings.

PN107

THE COMMISSIONER: Okay, so we will just go through those again on the record for everyone. Question 1 will be:

PN108

*If there are currently sufficient bids to the A380 from suitably qualified pilots currently employed by Qantas, then is it that SOTs cannot be allocated by Qantas to the A380?*

PN109

Question 2:

PN110

*What obligations does clause 19.1.2 impose, if any, upon the Association in relation to:*

PN111

*(a) the phrase 'otherwise agreed with the Association for operational reasons'; and*

PN112

*(b) the phrase 'The Association will not unreasonably withhold agreement'?*

PN113

And 3:

PN114

*In relation to Qantas' proposed allocation of SOTs to the A380:*

PN115

*(a) has the Association unreasonably withheld its agreement; and/or*

PN116

*(b) is the Association now unreasonably withholding its agreement?*

PN117

So, we will proceed on those questions.

PN118

That brings us to proposed directions. In terms of the proposed directions, Mr Dalgleish, your organisation is proposing the first direction to have about what appears to be about five weeks.

PN119

MR DALGLEISH: Well, there's the Christmas break in there, your Honour, lots of people are on holidays, and I can't say where the witnesses will be at any point. I mean it's a very unfortunate time for us. The idea that we are going to file something on 29 December, as proposed by Qantas, is ridiculous. The organisation here shuts down, and there's only 15 people that work in the

Association here, so we are very short-staffed and there will be no one around at all until 9 January, so it doesn't give us five weeks.

PN120

We have got so many other matters running at the moment before the Administrative Appeals Tribunal and everywhere else that the chances of anyone turning their mind to this until 9 January, when we return from the break, are extremely limited, although we might try to get some of the evidence - - -

PN121

THE COMMISSIONER: When does your organisation shut down because Qantas is proposing 23 December, which is pre-Christmas, this side of Christmas, not the 29th.

PN122

MR DALGLEISH: We are shutting, I think, lunch time on the 22nd.

PN123

THE COMMISSIONER: And leaving aside the Christmas break and everything else, normally there would be given a two to three-week period to file materials.

PN124

MR DALGLEISH: That's correct. I tried to make this as reasonable as possible given the Christmas break. I note, looking at Qantas' proposed directions, there was about a week between us. That was how I sort of did it, trying to put it into January, when most people are on a break, and then we come back in February and have the hearing, if necessary.

PN125

I don't know whether there will be agreed facts then - there may well be - and there may be no need for a hearing, it might be able to be determined on the documentary material filed, so I was a bit surprised to see from Mr Morton that they thought it was a two-day hearing because we haven't seen any of the material yet and it is the construction of a clause. I'm not sure how much will turn on the evidence of any witnesses put forward, if anything at all.

PN126

That's the best I could do, trying to accommodate for the Christmas break and the lead-up into Christmas, but we could extend out those dates if that suited Qantas on the other side. I would just be very hesitant to put anything before Christmas, knowing what's on at AIPA at the moment.

PN127

THE COMMISSIONER: Just what you've alluded to a moment ago about agreed facts, I mean, from the materials that have been exchanged between the parties thus far, there would have to be at least, I would suspect, some agreed facts, wouldn't there?

PN128

MR DALGLEISH: I think there's an agreed position that bypass pay doesn't apply under 16.5 and 16.6, so I don't think that will come into play. There would

be some agreement, I'm sure, about the first day lottery, which we wrote a paragraph about in one of our letters, but there hasn't been a lot of discussion about that in front of the Commission - there has been some discussion between the applicant and the respondent outside the Commission - but I heard what Qantas had to say the other day and I didn't see any issue with what was expressed by Mr Alley, so there may not be any issue in relation to that.

PN129

Now, the first day lottery, of course, will become more apparent to yourself, Commissioner, when it's written up in submissions. It's how we got to this clause, without going into the whole history of the clause and how it works, but, nevertheless, there might be agreement there. So, it might well be that there's no disagreement as to the facts. I just don't know until I've had a look at the evidence, but - - -

PN130

THE COMMISSIONER: Well, is one way of dealing with this to have up front a two-week period where the parties are to confer and file a statement of agreed facts, to the extent possible, and then directions kick in from there?

PN131

MR DALGLEISH: That's a possibility, and I would be open to - - -

PN132

THE COMMISSIONER: Because then that would narrow - depending on the scope of any agreed facts, it may well narrow and reduce the extent to which the parties need to file evidence.

PN133

MR DALGLEISH: No, I agree with that, and if Qantas is open to that, I would be very happy to entertain that.

PN134

THE COMMISSIONER: Mr Morton?

PN135

MR MORTON: Commissioner, given the history of this matter, I fear that we may lose two weeks by trying to agree facts where we can't. Thus, I would say - look, I'm not sure whether that would be a fruitful path, Commissioner.

PN136

THE COMMISSIONER: Okay, well, in the alternative, what would you be proposing then?

PN137

MR MORTON: Our proposed directions do give the applicant close to three weeks today, just shy of three weeks. On my friend's submission, it's a case of narrow ambit. Now, we don't necessarily agree with that, but, at least in terms of the construction issue and the historic approach to the first day lottery, the changes under Long Haul EA 9 and Long Haul EA 10, I think that's a reasonably

narrow ambit of material, so it's not clear to me why there could not be, you know, evidence filed in relation to those matters within three weeks.

PN138

Then, I guess, we will have to file on our side our history of those orders, evidence going to the history of discussions between the parties, and probably material going to the operational reasons that we are currently facing why we, you know, made the request. Our preference - I would urge our directions upon the Commission.

PN139

Let me also say, Commissioner, we have estimated a two-day hearing. I think we are quite firm with that position. I don't think this is a matter that can, or should, be dealt with on the papers. I have estimated a two-day hearing. It may be that it would be a one-day hearing, but I think, given the history of this matter, it may be prudent to allow two days, so, to a certain extent, I guess we are in the hands of the Commission as well because if the Commission, you know, doesn't have any hearing dates until, say, late February, then we would be in your hands and, you know, be open to an extended timetable.

PN140

THE COMMISSIONER: Well, that's where I was starting to go, Mr Morton, because I thought we might just look at when the two-day hearing can be accommodated.

PN141

MR MORTON: Yes.

PN142

THE COMMISSIONER: What I might do - I've got a couple of matters I just need to double-check in terms of - I might take a short adjournment until 10.55 am and just check a couple of matters and then I will come back to the parties and we will work backwards with a hearing date and/or dates and directions.

PN143

So, if I could ask the parties to reconnect at 10.55 and the Commission is adjourned, thank you.

PN144

MR MORTON: Thank you, Commissioner.

**SHORT ADJOURNMENT**

**[10.46 AM]**

**RESUMED**

**[10.57 AM]**

PN145

THE COMMISSIONER: I have checked a number of matters and my availabilities and it appears that I did think there was some availability in mid to late-February, but that doesn't appear to be the case, so, to accommodate two days, the matter would need to be listed in the week commencing 13 March. That week is fully open, so I would be open to having the matter be listed over two

days from the 14th onwards, if that's suitable to the parties, and, if that was the case, then the proposed directions of 16 January, I would then give Mr Morton and Qantas until 13 February and then the applicant in reply to 27 February. That would seem to resolve that issue.

PN146

In terms of those proposed hearing dates, I will go firstly to Mr Dalglish. Mr Dalglish, what would be the applicant's preference in that week?

PN147

MR DALGLEISH: Tuesday and Wednesday, if possible, would be our preference. Is that okay with you? Yes, Tuesday and Wednesday, Commissioner.

PN148

THE COMMISSIONER: Mr Morton?

PN149

MR MORTON: Yes, look, the Tuesday and Wednesday would be fine for us, Commissioner.

PN150

I would just flag one thing. Obviously, you know, we are in the hands of the Commission here. We do have a ground school starting 27 February and that ground school starts its active training for (indistinct) on 27 March. Ideally, we would have - and I'm not sure whether this would be possible and probably depends how the evidence plays out and the hearing plays out - ideally, we would have liked an indication before 27 March about whether we can allocate these SOTs to the A380 so that we can get a certain amount of training done this training year. Now, it may not be possible on this timeline and, if it's not, we accept that, but I just flag that as an operational matter for us, Commissioner.

PN151

THE COMMISSIONER: 27 March, do you say?

PN152

MR MORTON: Yes. So, basically, we will have an intake at the end of February. They do a four-week ground school and then we need to make a decision, probably by 25 or 26 March, and Doug will correct me if I'm wrong here, as to which fleet type they are going to be allocated to to commence training on that fleet type from 27 March.

PN153

THE COMMISSIONER: Very well. If the matter is listed for 14 and 15 March, while I won't be making any guarantee, I will attempt to have any decision as expeditiously as possible.

PN154

MR MORTON: Thank you, Commissioner.

PN155



THE COMMISSIONER: Okay. So, the directions will be issued as follows: direction 1 will refer to the questions; direction 2 will indicate to the parties - sorry, will require the applicant to file materials by 16 January, the respondent by 13 February and the applicant reply by 27 February, with a hearing to take place on 14 and 15 March.

PN156

In terms of the mode of the hearing, are the parties - I would be proposing the matter be heard in person at 80 William Street. Do the parties have anything they wish to say about that?

PN157

MR MORTON: No, I would agree that in person would be best, Commissioner.

PN158

MR DALGLEISH: We agree as well, Commissioner.

PN159

THE COMMISSIONER: Okay. Now, at this stage, neither party - well, the directions actually - well, neither party is represented by lawyers or paid agents, but, to the extent that arises, the directions will require or provide for submissions in support and/or opposition of any party's request.

PN160

Is there anything further the parties wish to raise with me at this stage?

PN161

MR MORTON: No, thank you, Commissioner.

PN162

MR DALGLEISH: No, thank you, Commissioner.

PN163

THE COMMISSIONER: As indicated, the notice of listing and directions will be issued by my chambers in due course. (Audio malfunction.) Sorry, can the parties hear me?

PN164

MR MORTON: You are just breaking up a little, Commissioner.

PN165

THE COMMISSIONER: Is that better?

PN166

MR DALGLEISH: Yes, that's much better, Commissioner.

PN167

THE COMMISSIONER: A notice of listing and directions will be issued in due course. It doesn't prevent the parties from having further discussions along the way and, to the extent any further discussions take place and a resolution is reached, that can be communicated to my chambers.

PN168

MR MORTON: Yes, thank you very much, Commissioner.

PN169

MR DALGLEISH: Thank you, Commissioner.

PN170

THE COMMISSIONER: There being nothing further, the Commission is adjourned, thank you.

**ADJOURNED INDEFINITELY**

**[11.02 AM]**