

IN THE FAIR WORK COMMISSION

Title of Matter: Four Yearly Review of Modern Awards
Section: s. 156 - 4 yearly review of modern awards
Subject: Air Pilots Award 2010 - Substantive Issues

FURTHER OUTLINE OF SUBMISSIONS ON BEHALF OF THE REGIONAL EXPRESS GROUP OF COMPANIES

A. BACKGROUND

1. This outline of submissions is made on behalf of the Regional Express Group of Companies (**Rex**), comprising Regional Express Holdings Pty Ltd, trading as Regional Express Airlines, Pel-Air Aviation Pty Ltd (**Pel-Air**) and the Australian Air Pilots Academy (**AAPA**).
2. We refer to and rely on the background to this matter as set out at paragraphs [2] – [8] of the Outline of Submissions in Reply to AFAP’s Submissions filed on 29 March 2019, and the Outline of Submissions in Support of Draft Clause filed on 18 December 2019 on behalf of Rex (**18 December 2019 Submissions**) save in respect of clause 16.1(H) as set out below.
3. The Submission of the Australian Federation of Air Pilots (**AFAP**) filed 27 December 2019 seeks to propose an additional change to the training clause in respect of the proposed cap on the “*actual costs*” for which a training bond may be implemented. For the reasons set out in these submissions, Rex does not agree with the AFAP’s proposed position.
4. In addition, during the teleconference on 5 February 2020, Vice President Catanzariti indicated that a further opportunity would be provided to the parties to address the proposed wording of the proposed clause 16.6(1)(H) of the Award. For the reasons set out in these submissions, Rex supports the clause proposed by Alliance Airlines (**Alliance**) and which it understands is supported by Qantas and the Regional Aviation Association of Australia (**RAAA**).

B. OVERVIEW OF REX’S POSITION

5. While there is some broad agreement between the parties in respect of the proposed training clause, aside from the matters raised in the 18 December 2019 Submissions which have already been addressed by the parties in previous submissions, there remain two key areas of dispute, as set out below.

Cap on “actual cost”

6. In its submissions filed 27 December 2019 the AFAP submit that the costs for which a training bond may be implemented ought to be capped at either:
 - (a) 50% of the actual costs; or
 - (b) an agreed value (which may vary type by type),whichever is the lower.¹
7. For the reasons set out in the 18 December 2019 Submissions, Rex submits that an airline should be able to implement a bond in respect of all costs associated with a pilot’s training. There is no good reason (consistent with the aims of Modern Awards) to impose any further financial limit on what costs might be agreed to be cover by a bond by setting an agreed value. This would effectively apply a lower cap on the costs for which a bond may be implemented (where a cap of actual costs (either in whole or in part depending on the Commission’s decision) already applies) and is impracticable for the reasons that follow.
8. The actual cost of training will depend on the type of aircraft and type of training. For example type rating training costs on a SAAB 340 aircraft will differ from upgrade training on that same aircraft (for example where a pilot upgrades in rank from First Officer to Captain and in circumstances where they have previously been endorsed to fly that aircraft type). Training costs will again differ greatly on a SAAB 340 as opposed to an Airbus A380. Training costs may also change from time to time depending on matters such as simulator costs.
9. By way of example, presently Rex is required to supplement its simulator training associated with the SAAB 340, which is conducted at the Ansett Aviation Training Centre in Tullamarine, Victoria costs \$1,054.97 per hour. This is purely for the hire of the simulator and does not include other costs such as travel and accommodation or the cost of the trainer. Not all aircraft types have simulators available within Australia, with some airlines needing to send pilots overseas to complete simulator training. In the case of the Saab 340, simulators are located in Kagoshima (Japan), Stockholm (Sweden), Farnborough (United Kingdom), or Houston, Dallas/Fort Worth, St Louis and Minneapolis (United States of America). If the Ansett simulator currently used by Rex ceased operating and Rex was required to relocate its simulator training to another location, this could greatly impact the “*actual cost*” associated with training.
10. In order to set an accurate agreed value, the Commission would need to engage not only in the lengthy and complex task of considering every possible type of training across every

¹ Submission of the Australian Federation of Air Pilots filed 27 December 2019, [13].

existing type of aircraft in order to ascribe a dollar figure, but to also consider possibly constantly changing elements such as operation costs associated with flying aircraft in non-revenue operations (such as fuel prices and wages of other pilots), external training provider costs, facility hire costs and the like which are impacted by external factors such as fuel prices, and fees set by external companies. Such calculations have the potential to almost immediately become obsolete/outdated and would then remain so until the next 4 yearly review.

11. Rex submits that such an exercise is not necessary in order for the Commission to establish fair and reasonable minimum conditions that should apply in the airline industry, and would require constant re-assessment and amendment over time. Permitting a training bond that covers 100% of the actual costs of training prevents an airline from setting a bond that exceeds the costs incurred in training a pilot, but allows for a proper safety net that is capable of covering fluctuations in costs due to factors such as those outlined at paragraph 10 above and is capable of addressing the varied costs associated with different types of training across different aircraft types. If costs fluctuate up, the maximum permissible amount of training bonds that can be entered into will increase. If costs fluctuate down, the maximum permissible amount will lower. In either case no pilot will be able to be bonded for more than the actual costs.

Recovery of bond in circumstances of termination for misconduct

12. During the teleconference on 5 February 2020 an issue was raised regarding the operation of proposed clause 16.6(1)(H) in circumstances where a pilot's employment is terminated for serious misconduct, but where the termination is later overturned by the Commission.
13. Proposed Clause 16.6(1)(H) of the Award provides that:

16.6(1) An employer and a pilot may, by agreement, enter into a training bond whereby the costs of training which have been or are to be borne by the employer may be recovered from the pilot if the pilot ceases to be employed by the employer within a period of time agreed between the pilot and the employer, subject to the following:

...

H. No amount can be recovered in the case of redundancy, loss of medical licence by the pilot, termination of employment by the employer (except in the case of serious misconduct) or where the Pilot fails the training course.

14. In submissions dated 7 February 2020, representatives for Alliance Airlines (**Alliance**) proposed that clause 16.1(H) should be amended as follows:

No amount can be recovered in the case of redundancy, loss of medical licence by the pilot, termination of employment by the employer (except for valid reason of serious misconduct) or where the Pilot fails the training course.

15. Rex supports this formulation. The term "valid reason" has a clear, legal and industrial meaning and preserves the intention of the clause, that is, to enable an airline to recover a bond where a pilot is terminated by reason of serious misconduct, but accommodates the situation where the Commission determines on an unfair dismissal application that there was no valid reason for dismissal. Rex understands that this position is also supported by Qantas and the RAAA.

16. In an email submission to the Commission dated 6 February 2020 the AFAP proposed that clause 16.6(1)(H) should be approved in the following form:

No amount can be recovered in the case of redundancy, loss of medical licence by the pilot, termination of employment by the employer (except where the termination is because of serious misconduct and there is no later finding by a court of tribunal or acceptance by the employer that the employee did not engage in the serious misconduct on which the termination was based) or where the Pilot fails the training course.

17. Rex does not support this amendment and prefers the proposed wording of Alliance, because the AFAP wording requires a finding of a Court or Tribunal to determine whether an amount can be recovered under the bond. The Alliance wording, on the other hand, allows each of the employer and the pilot to determine whether there was a valid reason of serious misconduct and then act accordingly. If they disagree the pilot can refuse to pay the bonded amount and argue her or his position when the employer seeks to enforce payment. The pilot is not required to challenge the dismissal (eg an unfair dismissal claim) himself or herself in order to be excused from the bond.

18. There is no prejudice to pilots in the clause jointly proposed by Alliance, Rex, Qantas and the RAAA. It is unambiguous, maintains the intention of the clause, and Rex submits that it sets an appropriate minimum standard to be applied in the circumstances.

19. Rex further submits that such a clause is necessary, in circumstances where the removal of such a clause may give rise to a situation where a pilot who wishes to cease their employment early could deliberately engage in an act of serious misconduct as a means of avoiding their liability to repay a training bond. This would entirely negate the purpose for which the training bond provisions exist and place airlines in a precarious position where they are unable to address pilot attrition rates. As outlined in the 18 December 2020 submissions, without the ability to adequately cover training costs by way of a training bond, Rex's viability and air services to regional and remote communities will be jeopardised.

20. Accordingly, Rex submits that the Commission should accept the formulation of clause 16.6(1)(H) as jointly proposed by Alliance, Rex, Qantas and the RAAA.

E. CONCLUSION

21. For the reasons set out above, the variations proposed by the AFAP should be rejected. Clause 16.6(1)(H) in the form jointly proposed by Alliance, Rex, Qantas and the RAAA, and the balance of the training clause in the form proposed by Rex in the 18 December 2019 Submissions is consistent with and forms fair and reasonable minimum conditions that should apply in the airline industry that meets the Modern Award objectives.

**Clayton Utz
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10 February 2020**