



Aerocare agreement must comply with the law

The Aerocare agreement for some staff is now at the Fair Work Commission for approval. The Commission has to make sure the agreement complies with the Fair Work Act before the agreement can take effect. Most importantly the Commission makes sure it passes the better off overall test, and to do this the Commission does its own analysis as well as asking the employer and the ASU if they think the agreement passes the better off overall test, and if not why not. The ASU has told the Commission, that, we believe the Agreement does not pass the better off overall test.

What is the better off overall test?

The Commission administers the better off overall test (commonly just called the BOOT) which, in the Commission's words requires:

Before approving an enterprise agreement, the Commission must ensure the agreement passes the better off overall test.

This test requires that each of the employees to be covered by the agreement is better off overall than under the relevant modern award.

The better off overall test is outlined in s.193 of the [Fair Work Act 2009](#).

The Modern Award for your industry, the Airline Industry, is the *Airline Operations Ground Staff Award*. This is a set of minimum conditions payable to employees in this industry. Other companies including Qantas, Virgin, Menzies and Dnata also have agreements which the Commission tests against this Award.

So why does the ASU think the agreement does not pass the BOOT?

The ASU has warned Aerocare since bargaining began that the agreement will

not pass the BOOT. The ASU stress tested the proposed agreement line by line, against the Award and identified over thirty terms and conditions that were below the Award.

From the failure to include the Award's nightsoil allowance to the removal of overtime payments for nominated hours and shift swaps to the exclusion of nearly all shift penalties (the pre-dawn shift allowance just does not really cut it), to requiring employees to work split shifts the ASU believes our members will in fact be much worse off under the proposed agreement than the Award.

Is there anything else?

Yes there is. In particular, we ask, whether it is correct that casuals have been left to languish under the Aerocare 2012 agreement? Before approving the Agreement the Commission is also required to consider what the position of casuals is.

So the ASU is asking the Commission to decide if it is fair to exclude casuals who have always been included in previous agreements and decision making.

What happens now?

The Commission will ask the ASU to give reasons why the ASU thinks the Commission approving the Agreement is not right.

The ASU will tell the Commission that the Agreement needs to be improved, that the Agreement needs to be a better deal for our members, a better deal for Aerocare employees.

The ASU wants the best Agreement possible, not an agreement that does not meet the legal test that every other company making an agreement has to abide by.

We know the company objects to your union raising these concerns. This is not surprising as it means they might have to pay money to staff or change practices. They may have to include more staff in decision making.

Often companies complain about having to abide by the law, they blame everyone but themselves – this is not unusual. But we ask

you – what is wrong with standing up for minimum entitlements and making sure everyone gets what they are legally entitled to for the top line work they perform day in and day out.

If Aerocare is complying with Fair Work Act test – they have nothing to fear.

How long will this take?

It can take 8-12 weeks for the Fair Work Commission to do their analysis of the agreement and it can also take some time for the commission to have hearings.

That said, it is important to remember that this process does not stop Aerocare paying the pay rise right now – it is up to them.

We will keep you posted on time frames.

More information

If you have questions or queries make sure you contact your local ASU representative.

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To join the ASU, you can join online now at our secure form: www.asu.asn.au/asujoin