

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

**I TE RATONGA AHUMANA TAIMAHI  
TĀMAKI MAKAURAU ROHE**

[2025] NZERA 282  
3342800

BETWEEN                      TAIZE ARRON TAYLOR  
Applicant

AND                              JETSTAR AIRWAYS  
LIMITED  
Respondent

Member of Authority:      Peter Fuiava

Representatives:            Richard McCabe, counsel for the Applicant  
Michael O'Brien, counsel for the Respondent

Investigation Meeting:      27 February 2025 in Auckland

Submissions and information received:    27, 28 February and 7 March 2025 from the Applicant  
27, 28 February 2025 from the Respondent

Determination:              19 May 2025

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**PRELIMINARY DETERMINATION OF THE AUTHORITY**

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**What is the employment problem?**

[1] This is an application for interim reinstatement by Taize Taylor, a former Junior Training First Officer (JFO) for Jetstar Airways Limited (Jetstar or the company) which operates as a crewing company that provides pilots and cabin crew on domestic, trans-Tasman, and Pacific Island flights operated by Jetstar Airways Pty Limited (Jetstar Australia).

**How did the Authority investigate?**

[2] Prior to the submissions hearing held on 27 February 2025, Mr Taylor lodged with the Authority a signed undertaking as to damages, an affidavit in support of his application for interim reinstatement, the first of two affidavits in reply, and a written synopsis of submissions. Following the submissions hearing, a written undertaking to underwrite damages from the New Zealand Airline Pilots Association IUOW Inc

(NZAPLA), Mr Taylor's union, was provided as well as a further affidavit in reply that Mr Taylor filed in response to new information provided by Tyrone Simes, the Chief Pilot and Head of Flying Operations for Jetstar Australia.

[3] For Jetstar, written submissions in opposition to interim reinstatement was provided in advance of the submissions hearing which was supported by affidavits from its People Manager Flying Operations and Operations Delivery, Trixie Kennedy, then Senior Manager Flying Operations, Captain Ian Griggs, and (now) current Senior Manager Flying Operations, Geoffrey Metcalf. As noted above, following the submissions hearing, I was provided with an affidavit from Mr Simes.

[4] As permitted by s 174E of the Employment Relations Act 2000 (the Act) this preliminary determination has stated findings of fact and law, expressed conclusions on issues necessary to dispose of the matter and specified orders made. It has not recorded all evidence and submissions received.

#### **What is the relevant background?**

[5] After completing the Qantas Group Cadet Program as a trainee in which he was awarded a cadet citation, Mr Taylor commenced working for Jetstar in July 2023. However, not long after doing so, he went on leave without pay and commenced a period of fixed-term employment for Jetstar Australia in order to bring up his flying hours.

[6] Mr Taylor's work for Jetstar was based in New Zealand which separated him from his partner and mother who both lived in Australia. Although he applied on compassionate grounds to work closer to home, his request was declined by Captain Griggs and Captain Tony MacDonald in September 2023 because of the impact this would have on the company's operations and on other employees. A subsequent application by Mr Taylor for a review of that decision was unsuccessful.

[7] On 10 January 2024, Mr Taylor, now a JFO, formally commenced working for Jetstar from Auckland. In March 2024, he encountered problems with not being paid correctly and despite informing payroll, the matter remained unresolved. In May 2024, Mr Taylor emailed Captain Griggs to dispute his decision to remove him from duty on 16 February 2024 for personal and non-work-related fatigue that resulted in a dock in

pay for him. In response, Captain Griggs stated that he had not made that decision which would normally have been made by a Fatigue Risk Specialist or the Senior Fleet Safety Advisor.

[8] In a staff survey, Mr Taylor vented his frustration about his pay dispute stating that his experience with working in the company was below his expectations, that he did not feel that he belonged in the company, and that his manager did not show regard to his wellbeing. Mr Taylor believes that his responses to the survey would have made him readily identifiable to Captain Griggs and that his responses were shared with him.

[9] On 9 August 2024, Mr Taylor received a telephone call from Captain Griggs who advised that it appeared that he may have misused Jetstar's concessionary staff travel conditions and social media policy. He was subsequently provided with two letters from Captain Griggs the first of which set out alleged breaches of the staff travel program conditions and the second, allegations concerning Mr Taylor's conduct. In total, seven allegations were made as set out below:

- (a) On 7 January 2024, while unfit for duty, Mr Taylor used staff travel to fly from Auckland to Sydney (Allegation 1).
- (b) On 25 January 2024, while on a training-available standby, he used staff travel to fly from Auckland to Sydney (Allegation 2).
- (c) On 16 February 2024, having advised crewing the night before that he was unfit for duty due to fatigue, used staff travel to fly from Auckland to Sydney (Allegation 3).
- (d) On 25 March 2024, having called in fatigued for a duty he was rostered to perform that day, used staff travel to fly from Auckland to Sydney (Allegation 4).
- (e) On 10 July 2024, was uncontactable by phone during a standby period but used staff travel to fly from Auckland to Sydney (Allegation 5).
- (f) On 16 to 17 July 2024, having previously advised the company that he was unfit to perform his rostered duty, was in Honolulu having travelled there earlier on staff travel. A medical certificate was later provided on 25 July 2024 to support this period of unfit for duty (Allegation 6).
- (g) As at 7 August 2024, Mr Taylor's Instagram account contained a number of photographs of him scantily clad or in underwear

standing which were alongside other photographs of him in front of Jetstar and/or Qantas Group branding. (Allegation 7).

[10] On 9 August 2024, Mr Taylor received a telephone call from Captain Griggs and was suspended on pay pending the outcome of the investigation. He was subsequently invited to attend a meeting with Captain Griggs, Ms Kennedy and Mr Metcalf to discuss the allegations and his response to them.

[11] On 29 August 2024, and in advance of the meeting, Mr Taylor responded to the allegations in writing. He explained that he was on a period of leave without pay for Allegation 1 which meant that it was outside the scope of the investigation. Regarding Allegation 2, Mr Taylor explained that he had agreed to a change to his roster to assist with Jetstar's operations and was assured that he would not be utilised that day. Concerning Allegation 3, Mr Taylor noted ambiguity with the staff travel policy with regard to being fatigued which he believed was distinguishable to being unfit for duty for which concessionary travel by staff was not permitted. In any event, he undertook not to use staff travel when fatigued in future.

[12] In response to Allegation 4, Mr Taylor reiterated his belief that he was allowed to use staff travel after reporting fatigue and that he was now in the dilemma of either having to push through and operate while fatigued or admitting fatigue but losing one night in Australia because he would not be able to use concessionary staff travel. Regarding Allegation 5, Mr Taylor expressed his disappointment in sleeping through telephone calls but this was due to caring for a sick housemate. In any case, he telephoned crewing to advise them that he was now back on standby. A screenshot of that call was submitted as evidence. As for Allegation 6, Mr Taylor stated that he intended to return in time for his duty days of 16 and 17 July but unexpectedly fell ill in Honolulu.

[13] Finally, regarding Allegation 7, Mr Taylor advised that most of the content on his profiles predated the commencement of his employment with Jetstar and that he was mindful of the social media guidelines and posted material he believed was professional and appropriate. By way of comparison, Mr Taylor referred to the social media of other staff to highlight an inconsistency. Nevertheless, in the interests of good faith, Mr Taylor removed the public post that gave rise to the allegation.

[14] The parties met on 29 August 2024. Supporting Mr Taylor at that meeting was his representative, Mr McCabe, and a legal associate. A subsequent meeting was held on 9 September 2024 in which Mr Taylor provided a written response to some additional questions from Captain Griggs and Ms Kennedy. In his second written response, Mr Taylor reiterated his previous undertaking not to use staff travel when fatigued in future.

[15] On 30 September 2024, Captain Griggs writing on behalf of Jetstar, informed Mr Taylor in two letters of his findings and proposed outcome. Allegations 1,2, and 7 were not substantiated and were not taken any further. However, Allegations 3,4,5, and 6 were substantiated and Mr Taylor was found to be in breach of the Jetstar collective agreement, the Qantas Group Standards of Conduct Policy, Jetstar Sick Leave Policy, Staff Travel conditions, duty of fidelity and obligation of good faith.

[16] It was proposed that Mr Taylor's concessional travel benefits be suspended for 12 months. In addition, the company considered his actions were "erosive" of trust and confidence and that regrettably his actions were "destructive" of that trust. The letter went on to state that Mr Taylor's actions suggested that he was prepared to breach policies and obligations for his own benefit and to the detriment of the company and his colleagues. Moreover, it was noted that he had not expressed any remorse but rather responded to the allegations by putting forward explanations that were not credible. The fact that he had failed to accept any wrongdoing had influenced Captain Griggs' thinking. In all the circumstances, it was proposed that Mr Taylor's employment be terminated on notice. He was invited to a further meeting so that his feedback on the proposed outcomes could be considered.

[17] Mr Taylor submitted a further letter of response on 4 October before the last meeting on 8 October 2024. He had in the interim received an audio file that was relevant to Allegation 3 (and Allegation 4) which concerned Mr Taylor being rostered for a flight duty which he did not do because he advised his employer the night before that he was fatigued. He then subsequently used staff travel to fly from Auckland to Sydney. The audio file recorded a conversation between Mr Taylor with a member of Jetstar's Recovery Team. Mr Taylor claimed that the recording showed an absence of any premeditated intent to misuse staff travel. He further claimed that his understanding

of the company's policies on fatigue was based on their ambiguous nature, which NZALPA had also recognised.

[18] Mr Taylor addressed Allegation 5 which concerned him being uncontactable on 10 July 2024 when he was on standby. Despite telephoning crewing that day, Mr Taylor expressed concern that Jetstar had no record of his telephone call. In response to using staff travel during his standby period, Mr Taylor stated that staff remained contactable up to two hours before the end of their rostered standby period.

[19] By way of further response to Allegation 6 which concerned Mr Taylor's travel to Hawaii for a short stay of just 24 hours, he explained that his delayed travel there was due to supporting his ill mother in Australia who had a neurologist appointment. In response to the notion that he had failed to book a return flight from Honolulu to New Zealand, Mr Taylor stated that he had previously succeeded in securing seats during peak periods. He intended to return to New Zealand in time for his rostered duty but had fallen ill in Hawaii.

[20] As for the claim of a lack of remorse, Mr Taylor stated that in his original response, he had clearly expressed disappointment in himself for sleeping through calls. He said he was visibly emotional during both meetings and had undertaken not to use staff travel when fatigued in future. Mr Taylor stated that he now understood that he was not entitled to use staff travel when fatigued and that if a written warning was issued instead, he would accept that as fair and reasonable in all the circumstances. If his employment was terminated, he would be without an income and face over AUD\$177,000 in student loans and would be barred from pursuing any future within the Qantas Group and find it extremely difficult to secure employment as a commercial jet pilot.

[21] On 8 October 2024, the parties had a further meeting to allow Mr Taylor to provide further feedback in person.

[22] On 9 October 2024, Captain Griggs delivered his findings which was that Mr Taylor would be terminated on notice (with notice to be paid in lieu). Briefly stated, Captain Griggs' letter of termination of employment stated that with respect to Allegations 3 and 4, the audio files did not show that Mr Taylor had sought the approval

of his manager to use staff travel when unfit for duty due to fatigue. His manager was the only person able to grant such approval.

[23] As for Allegation 5, Captain Griggs stated that Mr Taylor was still required to be contactable for the entire standby period and that he could be asked to perform a duty with a lesser call out time by mutual consent. Concerning Allegation 6, Captain Griggs did not consider Mr Taylor's explanation plausible as he would be returning to New Zealand during the school holidays when flights can be full. Further, the time Mr Taylor had advised Jetstar that he was unfit for duty due to illness was when the last possible flight had already left Honolulu.

[24] Mr Taylor subsequently lodged an internal appeal which was considered by Jetstar's Chief Executive Officer, Shelley Musk. On 9 October 2024, Mr Taylor through his representative, wrote to Ms Musk to advise (for the first time) of his concern that Captain Griggs was not the appropriate manager to conduct the investigation as he did not have an open mind and that there was direct or indirect bias that disadvantaged Mr Taylor.

[25] On 15 November 2024, Ms Musk dismissed Mr Taylor's appeal who was not satisfied that Captain Griggs was biased because Mr Taylor's ongoing pay dispute and staff survey responses (see above at [7] and 8]) existed at the time of Captain Griggs' initial letter of concern of 9 August 2024 (at [9]) and at no time during the preceding two months had concerns of bias been raised.

### **What is the relevant law?**

[26] In considering the application for interim reinstatement, I am required to consider the following four key principles:

- (i) is there an arguable case of unjustified dismissal?
- (ii) is there an arguable case of permanent reinstatement?
- (iii) where does the balance of convenience lie?
- (iv) what does the overall justice of the case require?

### **Is there an arguable case of unjustified dismissal?**

[27] The first question for consideration is whether there is a serious question to be tried that is not vexatious and frivolous.<sup>1</sup> The serious question threshold though is a “relatively low” one,<sup>2</sup> and an arguable case is one with some serious or arguable, but not necessarily certain, prospects of success.<sup>3</sup>

[28] Mr McCabe submits that Mr Taylor has an arguable case because both Captain Griggs and Ms Musk erred in finding that he had shown no remorse or had not acknowledged any wrongdoing. It was submitted that Mr Taylor’s belief that he had not done anything dishonest placed him in an invidious position in having to respond to the allegations with reasons. However, in doing so, he was perceived as not showing sufficient remorse.

[29] In determining his appeal, Ms Musk noted Mr Taylor’s apparent lack of remorse and his non-acknowledgment of wrongdoing (until after the fact) which meant that dismissal on notice was a reasonable outcome. It was suggested that Ms Musk may have spoken to Captain Griggs which Mr McCabe sees as sensible and does not object to if she did. However, it was submitted that at no stage before Mr Taylor’s dismissal was he told or made aware that showing remorse or admitting to wrongdoing would mean the difference between dismissal and a warning.

[30] Mr McCabe referred me to *C v Air Nelson Limited* as authority for the proposition that where remorse would clinch a less drastic disciplinary action, it was incumbent on the decision-maker to give some kind of indication that an expression of remorse was expected.<sup>4</sup> While the facts of the present case are considerably less serious than those in *C v Air Nelson Limited* which concerned alleged sexual misconduct and harassment, the point counsel makes is taken.

[31] Had Captain Griggs’ termination letter of 9 October reiterated what he had said in his earlier letter of 30 September 2024 that Mr Taylor had not expressed remorse and had failed to accept any wrongdoing, the failure to give an indication about remorse

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<sup>1</sup> *NZ Tax Refunds Ltd v Brooks Homes Ltd* [2013] NZCA 90 at [12].

<sup>2</sup> *Humphrey v Canterbury District Health Board* [2021] ERNZ 153 at [8].

<sup>3</sup> *X v Y Ltd v NZ Stock Exchange* [1992] 1 ERNZ 863 at 872.

<sup>4</sup> *C v Air Nelson Limited* [2011] ERNZ 207 at [63].

may have had greater traction. However, the termination letter instead shows a change of stance by Captain Griggs who acknowledged that Mr Taylor was remorseful for missing calls from crewing with respect to Allegation 5. On its face, when deciding to terminate Mr Taylor's employment, it appears that Captain Griggs did in the end take into account Mr Taylor's remorse in his decision making.

[32] That Ms Musk in her appeal decision at [22] says that Mr Taylor only acknowledged wrongdoing after the fact and did not otherwise accept responsibility is a finding that cannot be reconciled with Captain Griggs' termination letter. Anything that may have been discussed between Ms Musk and Captain Griggs prior to the appeal decision (assuming there was such a discussion) cannot be determined on the information and evidence before me. As such, at this early stage of the proceedings, I consider the absence of a 'remorse indication' (for want of a better phrase) to be weakly arguable.

[33] It was argued that Captain Griggs was not impartial because there was 'history' between him and Mr Taylor that ought to have disqualified Captain Griggs from the investigation process. This was because he had declined Mr Taylor's compassionate leave request to be permanently based in Australia for work, was "tardy" in addressing Mr Taylor's pay dispute, could identify him from his staff survey response which expressed criticism of Jetstar and his manager, and that he had personally searched Mr Taylor's social media posts that gave rise to Allegation 7.

[34] When the above concerns are individually and cumulatively considered, Mr Taylor appears to have a sound basis to challenge or at least question Captain Griggs' role as decision-maker. However, at no point were any concerns raised with Jetstar about Captain Griggs, not until the decision to terminate Mr Taylor's employment had been confirmed, which was made at the end of a two-month process. In explanation, it was submitted that Mr Taylor did not raise any concerns about Captain Griggs because he believed that this would antagonise him. However, such an explanation ignores the fact that Mr Taylor was represented by very experienced counsel throughout the investigation process. Although Mr Taylor contends that Captain Griggs spoke over him at one of their meetings (which is denied), the truth of the matter cannot be determined at this interim stage.

[35] It was argued that the Qantas Group Staff Travel Conditions (staff travel conditions) are ambiguous because nowhere does it specifically state that it is a breach to use staff travel when fatigued. It was submitted that the staff travel conditions did not form any part of Mr Taylor's terms and conditions of employment which meant that it was not open to Captain Griggs to dismiss him. Given the ultimate sanction for Mr Taylor was dismissal, it is necessary to examine whether or not the staff travel conditions were applicable to his employment as well as consideration as to how much weight was given to Mr Taylor being a relatively new employee of the Qantas Group and his understanding of the use of staff travel when fatigued. On this particular point, I am satisfied that there is a moderately arguable case of unjustified dismissal.

### **Is there an arguable case for permanent reinstatement?**

[36] Section 125 of the Act states that reinstatement is the primary remedy but it must both be practical and reasonable to do so. Here I look at the feasibility or practical workability of re-imposing the employment relationship. There appears to be a negligible case for permanent reinstatement. Chief Pilot and Head of Flying Operations, Tyrone Simes, attests in an affidavit that Jetstar Australia will not allow Mr Taylor to perform any flying duties for flights it operates if he is reinstated to his role of Junior First Officer on an interim basis. Although this comes close to suggesting that Jetstar would not comply with an order from the Authority, I do not take Mr Simes to mean this.

[37] Mr Metcalf says in his affidavit that given the substantiated conduct of Mr Taylor, including his failure to follow policy and procedure, his failure to comply with his contractual obligations, and his disregard of undertaking the duties he was rostered, Jetstar has lost trust and confidence in him and that he cannot be relied upon.

[38] It is accepted that Mr Taylor is a competent pilot and this has never been an issue. His cadet citation award is acknowledged as are his letters of support from fellow pilots who all comment favourably on his ability to fly aircraft safely and professionally. However, the letters of support stop short of demonstrating an awareness of the reasons why Mr Taylor's employment ended. For example, Allegation 5 concerned a breach of standby and none of his supporters commented on how such a breach might affect an airline's operations. Nor is it known whether Mr Taylor's supporters might agree with Captain Griggs that being contactable while on standby is

vital to Jetstar's operational integrity and that failing to report for a rostered duty has potential disruptive effects for the airline and its customers.

[39] I find there to be only a weak arguable case for permanent reinstatement.

**Where does the balance of convenience lie?**

[40] The balance of convenience requires an assessment regarding the impact on each party if interim reinstatement is granted or not. The Supreme Court has held that the merits of the case (in so far as they can be ascertained at the interim injunction stage) may be relevant in assessing the balance of convenience and the overall interests of justice.<sup>5</sup>

[41] Mr Taylor has filed an undertaking as to damages which has been underwritten by his union. He has a clean employment history and is a proven operator as noted above. If he is not reinstated, Mr Taylor states that his multi-crew flying hours are not sufficient to qualify him for appointment to a similar position. To rebut any concern that his employment matters could distract him, Mr Taylor proposed that he could operate as a third pilot/observer who did not operate controls, take off or land but be an additional layer of operational oversight and safety on board the craft.

[42] Jetstar's records show that Mr Taylor has accumulated 460 multi-crew hours. He requires 500 multi-crew flying hours to be able to apply for similar roles with other airlines but it could take him up to 12 months outside of Jetstar because most entry-level roles are for single-pilot aircraft and not multi crew. Mr Taylor estimates that it might take him a year to be promoted or upgraded within a smaller organisation to fly multi-engine or multi-crew aircraft. Once that occurred, it could take up to 24 months for him to get his 500 multi-crew hours with a smaller employer.

[43] If right, Mr Taylor would have to make a two-year sideways detour with his career in order to acquire his 500 multi-crew hours. This additional time is not able to be adequately compensated in damages and strikes as a harsh outcome for someone who had a clean work record leading up to his dismissal and was professionally competent as a pilot. However, damages were always going to be inadequate for Mr

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<sup>5</sup> *Brooks Homes Ltd v NZ Tax Refunds Ltd* [2013] NZSC 60 at [6].

Taylor because in deciding both the nature and extent of remedies to be provided in respect of a personal grievance, the Authority must consider the extent to which the actions of the employee contributed towards the situation that gave rise to the personal grievance.<sup>6</sup>

[44] In reinstating Mr Taylor, it could be argued that JetStar will benefit from having a highly skilled highly trained employee back in employment and earning it revenue. For Mr Taylor, returning to paid employment would enable him to meet his financial obligations including his student debt.

[45] However, Jetstar has lost trust and confidence in Mr Taylor and have made clear that he cannot be relied upon. This comes at the end of a series of decisions by Mr Taylor over a sustained period that appear to have been corrosive of Jetstar's ability to trust that he will be contactable during a designated standby duty and report for duty when required. While Mr Taylor's undertaking addresses concerns around his use of staff travel while fatigued and his work-around solution of working as a third pilot observer might allow him to work without distraction, Jetstar's concerns around his reliability while on standby and while on rostered duty remain. In any case, the work around solution, appears to circumvent Jetstar's risk-based approach in standing down pilots who are subject to processes that could affect their employment. Such a safety conscious approach is in the public interest.

[46] Weighing the factors discussed above, the balance of convenience lies against interim reinstatement.

### **Where does the overall justice lie?**

[47] The Court of Appeal stated that the overall justice assessment was essentially a check on the position that has been reached following the analysis of the earlier issues of serious question to be tried and balance of convenience.<sup>7</sup>

[48] In terms of the merits, I do not assess Mr Taylor's claims of unjustified dismissal or of permanent reinstatement particularly strong. The balance of convenience favours

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<sup>6</sup> Employment Relations Act 2000, s 124.

<sup>7</sup> *NZ Tax Refunds Ltd v Brooks Homes Ltd*, above n 1, at [47].

Jetstar. The overall justice does not favour interim reinstatement. The application is unsuccessful and is declined.

**Costs**

[49] Costs are reserved.

Peter Fuiava  
Member of the Employment Relations Authority