

Potential "wide ramifications" in court's stand-down ruling

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In a matter a judge has speculated could have "wide ramifications" regarding stand-downs, Qantas and Jetstar have won an injunction stopping the FWC from arbitrating a dispute concerning hundreds of engineers rendered idle by the pandemic.

In granting the injunction yesterday, Justice Anna Katzmann noted it would cause some prejudice to the ALAEA and its members, but that on balance Qantas and Jetstar's case for it managed to "fall over the line".

The injunction will be stayed for 48 hours and thereafter discharged if the FWC adjourns the hearing of the dispute and stays any interlocutory orders until the court rules on whether the Commission has jurisdiction to arbitrate the matter

In March, the ALAEA applied to the FWC for orders reversing the stand-downs of licensed aircraft maintenance engineers and recouping lost wages or paid leave for affected members.

The ALAEA argues the airlines made a business decision on the stand-downs because, while there is less maintenance work to be performed, work had not stopped and there is still maintenance to be done.

The airline told the court the Commission had no jurisdiction to deal with the disputes, while also seeking declarations that, on the proper construction of agreement clauses, they stood the engineers down due to a stoppage of work that Qantas and Jetstar could not be held responsible for or prevent.

Justice Katzmann said the directions made by the FWC contemplated dealing with the jurisdictional and substantive questions together.

"While there is no doubt that it would be more efficient to have the jurisdictional question determined first, the fact that the issues have been slated for determination together is of the airlines' own making," the judge said.

"The airlines were not entirely frank with the court about this matter.

"In other words, this was not just a case of the airlines consenting to the Commission hearing the jurisdictional and substantive questions together; it was their idea."

Justice Katzmann said the airlines had, rightly or wrongly, "misapprehended the nature of the ALAEA's case" until it was spelled out in written submissions filed on April 27.

Best if questions "not left to private arbitration"

She said the Commission's jurisdiction depended on whether the disputes related to a matter arising under the agreements or in relation to the National Employment Standards.

"While refusing the injunction poses no immediate threat of irreparable harm to the airlines and granting it would cause some prejudice to the ALAEA and its members, and while the position in which the airlines find themselves is largely of their own making, it seems to me that the airlines do fall over the line."

"If the proceeding in the Commission were allowed to take its course, considerable expense may be unnecessarily incurred.

"The jurisdictional question should be resolved first and it is preferable that it be determined finally by the court.

"That will either dispose of the dispute completely or in part and will be more efficient, since, whatever the outcome, the prospect of an application for judicial review is probably inevitable.

"The prejudice to the ALAEA and its members is addressed by the airlines' offer, through its counsel, of the usual undertaking as to damages."

The judge said the issues raised by the ALAEA in the Commission were of general importance and their resolution potentially had wide ramifications "well beyond the affected LAMEs, indeed, well beyond the parties".

"The evidence indicates that the airlines have stood down around 20,000 employees.

"Numerous other businesses have stood down employees in the wake of the current pandemic and the Government's response to it.

"While there is no evidence about the stand-down clauses in any other enterprise agreement, it is more than likely they are similar in terms to the clauses in the Qantas and Jetstar agreements."

Justice Katzmann said the issues raised by the union also dealt with the interpretation of s524(1)(c) of the Fair Work Act, which deals with stand-downs.

"It is in the interests of justice that questions of such general and widespread application and importance be determined by a superior court and not left to private arbitration."

[Qantas Airways Ltd v Australian Licensed Aircraft Engineers Association \[2020\] FCA 682 \(19 May 2020\)](https://cdn.workplaceexpress.com.au/files/2020/Qantas%20Airways%20Ltd%20v%20Australian%20Licensed%20Aircraft%20Engineers%20Association%202020%20FCA%20682.pdf) – please copy and paste below link

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