

case, the “other enactment” is an Australian statutory instrument known as the Civil Aviation Order (CAO) 48 exemption.²

[3] CAO 48 requires that flight crew (including the respondent) must comply with prescribed duty limits and mandatory periods of rest.³ In particular, the respondent may not operate an aircraft unless he is sufficiently rested and has taken adequate sustenance, is obliged to ensure that he has taken adequate rest before commencing or re-commencing duty, is restricted as to the number of hours he may work on a given roster and is subjected to prescribed periods of rest and restrictions on cumulative work hours over various periods.

[4] Section 69ZH(2) provides:

- (2) Despite subsection (1) where an employee is a person who is required to take a rest break by, or under, another enactment, the requirement for a rest break defined by, or under, the other enactment applies instead of the provisions or entitlements for rest breaks or meal breaks provided under this Part.

[5] There was a dispute between Jetstar and Mr Greenslade about the effect of this provision. Jetstar argued that the requirements under the CAO 48 Exemption were requirements “to take a rest break by, or under, another enactment”, and thus applied to the exclusion of the entitlements for rest breaks under Part 6D. The Court of Appeal considered that this interpretation was not available. The term “rest break” (and the term “meal break”) are not defined terms, but it is obvious that both rest breaks and meal breaks are to occur within a “work period”, rather than between work periods.⁴ In contrast to this, the CAO 48 Exemption requirements are concerned with periods of rest between work periods, rather than during work periods.

[6] Jetstar argues that the first two references to “rest break” in s 69ZH(2) should be interpreted as encompassing periods of rest which do not occur during a single work period, but that the later reference to “rest breaks” in the same subsection

² Instrument No SR224/12. Jetstar operates in New Zealand under an Australian Air Operating Certificate, which is recognised by the Civil Aviation Act 1990 and under which Jetstar is required to comply with CAO 48.

³ Instrument No SR224/12, sch 1.

⁴ *Jetstar (CA)*, above n 1, at [21]–[23].

should revert to the meaning that it has elsewhere in Part 6D, namely a break during a period of work. The Court of Appeal rejected that interpretation.⁵ Jetstar wishes to argue that its interpretation is supported by the legislative history (s 69ZH(2) was the product of a late amendment proposed by a Member of Parliament other than the Minister who introduced the original bill). It also wishes to argue that the statutory context and an analysis of the purpose of the provision support its interpretation. It says that leave should be granted because the matter is a matter of general commercial significance (the Court of Appeal decision was the first appellate decision on Part 6D), it is a matter of importance to other employers and it is important that an authoritative determination be reached. It also says the proposed appeal raises another point of importance, namely the role of legislative history in interpreting statutes.

[7] We do not consider that the application meets the criteria for the grant of leave. The difficulty of interpretation arises only in circumstances arising where the “other enactment” requires periods of rest between work periods rather than during work periods. The interpretation Jetstar would press if leave were given appears strained. There is no pressing need for a decision from this Court about the role of legislative history in statutory interpretation. We do not consider that there is any risk of a miscarriage of justice arising in the event that leave is not granted.

[8] We therefore decline leave to appeal.

[9] We award costs to the respondent of \$2,500.

Solicitors:
Kensington Swan, Auckland for Applicant
R R McCabe, Auckland for Respondent

⁵ At [35]–[40].