Supreme Court of New Zealand

Te Kōti Mana Nui

14 JULY 2017

MEDIA RELEASE – FOR IMMEDIATE PUBLICATION

NEW ZEALAND AIR LINE PILOTS' ASSOCIATION INCORPORATED v AIR NEW ZEALAND LIMITED

(SC 48/2016) [2017] NZSC 111

PRESS SUMMARY

This summary is provided to assist in the understanding of the Court's judgment. It does not comprise part of the reasons for that judgment. The full judgment with reasons is the only authoritative document. The full text of the judgment and reasons can be found at Judicial Decisions of Public Interest www.courtsofnz.govt.nz

Background

Pilots who are employed by Air New Zealand Limited generally belong to one of two employee associations: the New Zealand Air Line Pilots' Association Incorporated (NZALPA) or the Federation of Air New Zealand Pilots Incorporated (FANZP).

NZALPA entered into a collective agreement with Air New Zealand which came into effect on 5 November 2012 and expired on 4 November 2015. Clause 24.2 of the collective provided that if, during the term of the collective, Air New Zealand entered into "any agreement" with any other pilot employee group which was more favourable than the NZALPA collective, that "agreement" would be passed on to the NZALPA pilots on request.

In early 2013, Air New Zealand entered into a new collective agreement with FANZP. The agreement with FANZP provided for higher rates of pay than the NZALPA collective agreement for B737-300 first officers and all second officers.

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Shortly after the new FANZP collective came into force, NZALPA wrote to Air New Zealand invoking cl 24.2, requesting that the higher rates of pay for the B737-300 first officers and all second officers be passed on to equivalent NZALPA pilots. Air New Zealand declined on the basis that the proper interpretation of cl 24.2 was that it only allowed the passing on of the whole collective and not just of particular terms. NZALPA asserted that the correct interpretation of cl 24.2 was that it required the passing on of specific terms.

The Employment Relations Authority accepted Air New Zealand's interpretation.

The Employment Court reversed the decision of the Authority, finding that the word "agreement" in cl 24.2 encompassed constituent parts of a collective, and therefore, Air New Zealand were required to pass on the higher remuneration rates for the B737-300 first officers and all second officers.

Air New Zealand then sought leave to appeal the Employment Court's decision to the Court of Appeal. Section 214(1) of the Employment Relations Act 2000 restricts the Court of Appeal's jurisdiction; it cannot hear an appeal on the "construction of … a collective employment agreement".

The Court of Appeal decided it had jurisdiction to hear the appeal. This was because the Court considered that there was an error of interpretive principle in the Employment Court judgment. While the Employment Court had considered the natural and ordinary meaning of the term "any agreement" in cl 24.2, it had not given that meaning any force.

The Court of Appeal allowed the appeal. This was on the basis that the words "any agreement" in cl 24.2 meant the whole collective agreement and not its constituent parts. The decision of the Authority was therefore reinstated.

NZALPA then sought the leave of this Court to appeal this decision on the basis that, under s 214(1), the Court of Appeal did not have jurisdiction.

The question for this Court was whether the Court of Appeal was correct to conclude that it had jurisdiction to hear the appeal.

Reasons

This Court by majority (Arnold, O'Regan and Ellen France JJ and William Young J writing separately) has dismissed the appeal, finding that the Court of Appeal did have jurisdiction to hear the case.

The majority (Arnold, O'Regan and Ellen France JJ) has held that the limitation in s 214(1) of the Employment Relations Act on the appellate Courts' jurisdiction does not prevent the appellate Courts from giving leave to appeal in relation to questions of interpretive principle going

beyond the construction of the particular collective agreement. The majority has held that the Court of Appeal did have jurisdiction to hear the appeal because the approach of the Employment Court comprised errors in interpretive principle. Namely, the Employment Court Judge wrongly took into account negotiations between the parties and the subjective intentions of the parties.

The majority has noted however, that the fact that the Employment Court's approach to interpretation was incorrect did not necessarily mean that the interpretation of the cl 24.2 contended for by Air New Zealand was the proper one.

The majority has stated that such a finding would normally lead to the case being remitted back to the Employment Court. However, in the present case, that course has not been followed.

This is because the possible variations in meaning of cl 24.2 have not been the subject of argument and neither party wished to pursue them, and in addition, because leave was applied for and granted only on the question of jurisdiction.

William Young J, in a concurring judgment, agreed with the majority's analysis on the question of jurisdiction in relation to s 214(1) of the Employment Relations Act. In addition to the errors of interpretive principle identified by the majority, William Young J considered that the Employment Court's failure to focus on what cl 24.2 meant, as opposed to what the parties submitted it meant, also constituted a failure to apply correct principles of interpretation. Accordingly, the Court of Appeal had jurisdiction to hear the appeal.

Glazebrook J, in a dissenting judgment, would have allowed the appeal. She agreed with the majority that despite s 214(1), the appellate Courts have jurisdiction to consider an appeal where the Employment Court has not applied the correct principles of contractual interpretation.

However, Glazebrook J considered that: first, the Court of Appeal did not identify any error of interpretive principle by the Employment Court; second, that the errors of principle identified by the majority were not operative; and third, that any possible error was one in the application of cl 24.2 and not in its interpretation. Finally, if she had agreed with the majority that there were operative errors of interpretive principle in the Employment Court, Glazebrook J would have remitted the case to that Court for the determination of the proper interpretation of cl 24.2.

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