**RECOMMENDATION**

Virgin Australia Airlines Pty Ltd T/A Virgin Australia

(B2021/72)

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| COMMISSIONER SPENCER |

23 MARCH 2021

COMMUNICATION TO EMPLOYEES – IN PRINCIPLE AGREEMENT FOR VOTE

1. I am providing this Recommendation as a direct communication to employees, regarding the in principle Agreement for vote. The negotiating group made up of the Transport Workers’ Union, the Flight Attendants’ Association of Australia and Virgin Australia Airlines Pty Ltd (Virgin Australia) have faced particular challenges in negotiating this proposed Agreement. They have conducted these five days of negotiations (before the Commission) in good faith.
2. Employees need to be aware that if this Agreement is not successfully accepted at the vote, realistically the circumstances of continuing negotiations cannot continue. Employees should recognise that to Virgin Australia’s credit, they have sought the assistance of the Commission, with the Unions, to participate in these further negotiations. This option of reaching an Agreement, overseen by the Commission, was also supported by the Unions.
3. At all times Virgin Australia has wanted to negotiate with the Unions and reach an Agreement with their employees. However, if this in principle Agreement is not accepted at the vote, limited alternatives remain. It should be seriously considered that the current circumstances of the lengthy negotiations cannot continue. I am confident after the exhaustive negotiations before me, that this is the best package that can be achieved. Employees should not assume, that if they expect negotiations to recommence, that this will be the starting point of negotiations.
4. In my view, if this vote is unsuccessful, realistically, limited options will remain. It should be understood, that against the Commission’s tests, if the Company is faced with a second failed vote was then to make an application to terminate the Agreement and return to the Award; the circumstances would then meet the Commission’s tests for termination of the Agreement. [[1]](#footnote-1) Importantly, the majority of terms in this, in principle Agreement, are significantly more favourable to employees, than many provisions in the Award.
5. It is clear that further negotiations would not be acceptable, given the pressure to provide certainty for employees and the operating environment. On this basis, the in principle Agreement is clearly recommended to employees to support at the vote. I have come to this view, having listened to the submissions on the challenges, facing the negotiating group. I set out some of those in summary terms below.
6. Lastly, I indicate that I have taken this unusual step to communicate directly with employees, because the commitment and determination of all parties to the negotiations, has given me an insight into the positive culture between this employer and their employees. This Agreement would allow for the continuing focus on this outcome for employees, rather than on lesser alternatives.

CHALLENGES FOR NEGOTIATIONS

1. The Commission recognises that employees are acutely aware of the circumstances, that they and the Company have faced across the last two years; having lived through the significant job losses, uncertain employment arrangements and the effect on their personal circumstances. Some time was spent by the Unions’ representatives and the Employer, setting out the impact of this period on many employees and the Company.
2. The challenges for the negotiations in summary terms:

* the Company operated at a trading loss since 2012;
* 17 July 2019 Virgin commenced negotiations for a new Cabin Crew Agreement to replace the *Virgin Short Haul Cabin Crew Agreement 2015* (which passed its nominal expiry date on 12 October 2019);
* the Company returned a $315 million statutory loss, after tax in the 2019 financial year;
* between July 2019 and late February 2020, 8 negotiating meetings were held by the Company, separately with the TWU and the FAAA. The negotiating meetings were suspended with the onset of COVID-19;
* COVID-19 grounded the airline industry;
* all cabin crew employees were stood down or had their working hours significantly reduced;
* the Company entered voluntary administration in April 2020;
* Virgin change of ownership to private owner Bain Capital;
* significant reduction to the fleet of planes and changes to the Company’s operating model was required – the Company was repositioned as a mid-range carrier;
* impact to 3000 primarily operational roles due to suspension of international operations and discontinuation of Tigerair brand;
* more than 1100 Virgin Australia cabin crew were made redundant during this period;
* redeployment pool for impacted cabin crew was created to support redeployment of cabin crew dependent on future operations;
* 17 November 2020, Virgin exits voluntary administration;
* negotiations between Virgin Australia and the unions on a new Cabin Crew Enterprise Agreement resumed in September 2020 and a further 37 negotiating meetings were held;
* the Employer put a proposed Agreement to vote in December 2020. The proposed Agreement was not passed;
* further meetings occurred between Virgin Australia and unions following the unsuccessful vote; and
* 11 February 2021, Virgin Australia made an application to the Commission seeking bargaining assistance.

1. The clear desire of the negotiating group was to provide ongoing job security and to reach a new Agreement, rather than the termination. My view is that these final robust negotiations have achieved this result.
2. The current Agreement is uncompetitive when compared with some provisions in the *Aircraft Cabin Crew Award 2020* and some of Virgin Australia’s competitor, cabin crew Enterprise Agreements.
3. The in principle Agreement represents a compromise between the parties in the current negotiating environment, against the aims of employment, flexibility and profitability. The discussions have been facilitated by the Commission, with those absolute aims in mind.
4. The in principle Agreement represents, a package of provisions to be taken to vote. The work that the parties have done has to be given real consideration, with only some direction from the Commission to impose some difficult outcomes, to meet the aims of both parties.
5. The in principle Agreement is presented in summary terms below:

* An increase in the planned roster period limit to 144 hours plus up to 5 hours of reasonable additional overtime to 149 hours;
* Part time planned roster period hours to increase by two (2) hours as follows:
  + Fixed PT70 from 70 to 72 hours;
  + Variable PT80 from 70-80 hours to 72-80 hours; and
  + Flexi PT112 from 84-112 hours to 86-112 hours.
  + *\*The reasonable additional overtime buffer of no more than 3 hours will continue to apply.*
* A reduction to the sign off time for domestic duties from 30 minutes to 20 minutes;
* Nine (9) DDOs including the retention of the 2015 DDO buffers either side of one (1) or two (2) DDOs;
* Agreement to nominally expire in October 2023 with a 2% increase to Base Salary payable in October 2022;
* Introduction of Blank Days (Blank Day cap increase to 140 hours in accordance with the four (4) hour increase to the roster period limit);
* Introduction of full reserve rosters by nomination only (opt in);
* Ability to roster two (2) operating sectors and one (1) positioning sector, in any combination, for duties above 11 hours and up to 12 hours;
* Ability to roster four (4) operating or positioning sectors up to eleven (11) hours in any combination;
* Ability to roster two (2) sectors up to eleven (11) hours where the duty includes a back of clock sector; and
* The representation of the Unions on the Pairing and CAST, and Rostering Committees (to monitor the rostering of otheragreed pairings, comprising of 3 operating sectors of up to 12 hours and the relevant fatigue management, with the Committee Terms of Reference to be developed and reviewed)

1. The work of the negotiating parties has been commendable. This in principle Agreement is Recommended to employees. This shorter term Agreement offers advantages and protections to both parties.



COMMISSIONER PAULA SPENCER

1. [2015] FWCFB 540. [↑](#footnote-ref-1)