CHAPTER IX

THE AIRCRAFT COMMANDER AS EMPLOYEE

LEGAL STATUS OF FLYING PERSONNEL

Except when the aircraft commander is at the same time the owner or operator of the aircraft which he pilots, one of the aspects of his legal status is determined by the fact that he is an employee.

Maritime law contains numerous detailed provisions relating to the master of a ship in his capacity of employee ¹.

Foreign air legislation likewise contains special regulations governing the status of flying personnel, including the aircraft commander (e.g. the French ² and Italian ³ rules for flying personnel, and the German ⁴ regulations which have meanwhile been suspended). CITEJA also had a series of projects concerning the status of flying personnel on its programme for many years. The latest project, which dates from 1946, comprises provisions on the subject of the contract of employment, compulsory insurance against accidents, and repatriation on termination of employment.⁵

Special rules and regulations dealing with the conditions of employment of flying personnel, however, are not to be found in Dutch law. We must therefore assume that the rules of common law apply in this connection. Accordingly, as the position of the aircraft commander does not differ from that of other employees in this respect, we shall not go into the subject in further detail.

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³ Giannini, „Lo Stato Giuridico della Gente dell’Aria“.
⁴ Döring, „Das Arbeitsrecht des Bordpersonals der Deutschen Luftfahrtunternehmen“ ArchfLR 1941; Richter, „Bemerkungen zum Arbeitsrecht des Luftverkehrs-personals“, ArchfLR 1935. For the status of Swiss flying personnel see: Bucher, „Le Statut juridique du personnel navigant de l’aéronautique civile“ and Bratschi, „Die Rechtsstellung des Luftfahrtpersonals“.
⁵ CITEJA Doc. 451.
One cannot help feeling that the special regulations mentioned above are largely based on maritime law rather than on the practical requirements of present-day aviation. The relevant provisions of maritime law frequently have a historical explanation. In the case of long sea voyages on which illiterate hands were sometimes signed on for a single trip, it could be useful to have the conditions of employment legally regulated in detail, preferably on an international basis, in order to prevent abuses. On the other hand, the flying personnel engaged in modern commercial air transportation form a highly select group on the labour market, and as such they have generally proved to be able to negotiate favourable working conditions for themselves.

The short duration of a journey by air reduces the possibility of the crew experiencing undesirable conditions (e.g. poor meals or bad accommodation), and even if such a situation should occur, it is not necessarily of vital importance. In addition, the very high costs attached to advanced instruction and training of flying personnel generally strengthen the ties with the employing companies. Formerly it was quite possible that a seaman might be paid off in some distant port and left to his fate, but this is almost inconceivable in aviation. Statutory regulations concerning a right to repatriation therefore appear to be superfluous. Regulations regarding holidays with pay, health insurance, accident insurance, etc., already appear in the contracts of employment as a matter of course.

For the above reasons, it is not felt necessary to have a special statute governing the legal status of flying personnel in the Netherlands. Common law ensures free consultation between the parties concerned, and in our opinion this is an adequate guarantee of reasonable conditions of employment.

SPECIAL CIRCUMSTANCES OF EMPLOYMENT IN AVIATION

In spite of the foregoing, the circumstances under which the aircraft commander performs his duties present a number of exceptional features. How do these conditions of employment differ from those of the majority of other employees?

The risk element has always characterized the work of the aircraft commander (and of other flying personnel).

In the early years of civil aviation (1921) the expectation of