

EDITORIAL NOTE: CHANGES MADE TO THIS JUDGMENT APPEAR IN [SQUARE BRACKETS].

**IN THE DISTRICT COURT  
AT WELLINGTON**

**CRI 2017-085-1377  
[2018] NZDC 4966**

**CIVIL AVIATION AUTHORITY**  
Prosecutor

V

**ANTHONY LAURENCE GALLON**  
Defendant

Hearing: 6 March 2018  
Appearances: M Jenkins for the Prosecutor  
G Reeves for the Defendant  
Judgment: 20 March 2018

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**RESERVED JUDGMENT OF JUDGE S M HARROP  
AS TO VERDICT**

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**Introduction**

[1] Mr Gallon was a passenger on an Air New Zealand flight from Melbourne to Wellington on the evening of 30 December 2016. He became concerned at the way in which parents seated across the aisle from him were treating their distressed baby. He considered their actions amounted to a form of child abuse or child torture. After the father was challenged by Mr Gallon about what he was doing, the father called over the inflight service manager, [the victim]. She did not consider there was anything wrong with the way the parents' actions and asked Mr Gallon to return to his seat, which he did. He continued however talking to the family from his seat which led to [the victim] to inform the captain of a developing situation. As a result Mr Gallon was, with his agreement, moved four rows forward. He asserted that [the victim], by not doing anything about the situation was condoning the parents' unacceptable behaviour.

He wrote down her details and (although this is disputed by Mr Gallon) took his cell phone out and recorded a video or took photographs of her. He frantically wrote a note to the captain expressing his concern about the parents' behaviour and at [the victim] refusal to allow him to ensure that the child was not further ill-treated. He told the captain that if he would not "assign supervision to the child", then he would be choosing to tolerate child abuse.

[2] After being given a final warning in respect of his behaviour and threatened with being handcuffed and met by the Police when the plane landed, Mr Gallon initially became compliant but then attempted to return to the row where the family was sitting.

[3] After the plane landed, Mr Gallon was spoken to by [the Constable] who saw the note which had been passed on to the captain. He issued an infringement notice but after Mr Gallon indicated his wish to dispute it a charging document was filed alleging that he had committed an offence against s 65G(1)(b) of the Civil Aviation Act 1990 in that while on the aircraft he behaved in a disorderly manner towards a crew member. The charge carries a maximum penalty of a \$5,000 fine.

[4] Mr Gallon pleaded not guilty. At the hearing before me on 6 March 2018 evidence for the prosecution was given by [the victim] and [the Constable] and Mr Gallon elected to give evidence in his own defence. He disputes aspects of the prosecution evidence but fundamentally contends that his conduct was driven entirely by a genuine concern for the welfare of the child and that in no respect did he behave in a disorderly manner towards [the victim], or any other crew member.

### **The charge**

[5] Section 65G of the Civil Aviation Act 1990 provides:

#### **65G Disruptive conduct towards crew member**

- (1) Every person commits an offence who, while in an aircraft,—
  - (a) uses any threatening, offensive, or insulting words towards a crew member; or

- (b) behaves in a threatening, offensive, insulting, or disorderly manner towards a crew member; or
  - (c) behaves in a manner that interferes with the performance by a crew member of his or her duties; or
  - (d) intentionally interferes with the performance by a crew member of his or her duties.
- (2) Every person who commits an offence against subsection (1)(a) or (b) or (c) is liable on conviction to a fine not exceeding \$5,000.
  - (3) Every person who commits an offence against subsection (1)(d) is liable on conviction to imprisonment for a term not exceeding 2 years or a fine not exceeding \$10,000.
  - (4) It is a defence in a prosecution under subsection (1)(a) for using offensive or insulting words if the defendant proves that he or she had reasonable grounds to believe that his or her words would not be overheard by a crew member.

[6] This section appears in Part 5A entitled “Unruly passenger offences” which was inserted into the Act by s 28 of the Civil Aviation Amendment Act 2004, one of the stated purposes of which, as set out in s 3(b), was to “deter, and provide penalties for, certain types of unruly behaviour that may occur on an aircraft”.

**What is the meaning of behaving in a disorderly manner towards a crew member?**

[7] There is no definition of “disorderly manner” in the Civil Aviation Act nor is there any reported case which has considered s 65G, as far as counsel and I am aware.

[8] As I understood it counsel were essentially agreed as to the appropriate legal test but differed in its application to the facts. I proceed on the basis that the charge requires proof of conduct causing anxiety or disturbance at a level beyond that which a reasonable crew member should be expected to bear.

[9] This approach is supported by observations made by the Supreme Court in the leading case of *Brooker v Police*.<sup>1</sup>

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<sup>1</sup> *Brooker v Police* [2007] 3 NZLR 91

[10] That case dealt with a charge under s 4(1) of the Summary Offences Act 1981 of behaving in or within view of any public place in an offensive or disorderly manner.

[11] Elias CJ considered that under that provision disorderly behaviour meant:<sup>2</sup>

“Behaviour seriously disruptive of public order. Simply causing annoyance to someone else, even serious annoyance, is insufficient if public order is not affected.”

[12] Her Honour emphasised that the purpose of the section was the preservation of public order:<sup>3</sup>

“It exists for the purpose of preservation of public order, not to protect privacy or personal sensitivities alone ... To constitute disorderly behaviour under s 4(1)(a) there must be an objective tendency to disrupt public order, by behaviour or because of the effect of words used. Whether behaviour is disorderly is not to be assessed against the sensibilities of individuals to whom behaviour is directed or are present to see and hear it, but against its tendency to disrupt public order.”

[13] Blanchard J said:

“Whether a behaviour can truly be characterised as disorderly therefore depends not only upon what the defendant says and does but also upon when and where the behaviour occurs and its effect on the lives of other people. Whilst the meaning of ‘disorderly behaviour’ is constant, the application of that expression will adjust to the circumstances. Something which could not properly be seen as a disorderly act when done in a public place during daylight hours may be in breach of s 4(1)(a) if done there in the middle of the night; and it is likely to take less to disturb public order in a quiet suburban street than in a busy city square.”

[14] Tipping J said:<sup>4</sup>

“Any modern test for determining when conduct is disorderly must be capable of application both to ordinary cases and to those that are less simple because aspects of the rights and freedoms affirmed by the Bill of Rights are engaged. With that in mind I would reformulate earlier tests in the following way. Conduct in a qualifying location is disorderly if, as a matter of time, place and circumstance, it causes anxiety or disturbance at a level which is beyond what a reasonable citizen should be expected to bear. Unless that is so, the conduct will not warrant the intervention of the criminal law. If it is so, the public has a legitimate interest in proscribing the behaviour, and thereby protecting citizens from it. In this way public order is protected.”

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<sup>2</sup> At [24]

<sup>3</sup> At [41]

<sup>4</sup> At [90]

[15] While these tests are with respect indeed helpful, clearly there must be special regard to the environment on an aircraft to which this charge applies and to the requirement that the requirement be directed towards a crew member who of course has special responsibility but also special power in respect of passengers. Cabin crew and in particular the inflight service manager have responsibility for the safety and comfort of all passengers in a confined space on any given flight. Clearly what may not be disorderly behaviour in a less confined environment may be so in the specially enclosed environment of an aircraft.

[16] It is against this background that I proceed on the basis that to succeed the prosecution must prove beyond reasonable doubt that Mr Gallon behaved in a way that caused anxiety or disturbance at a level beyond that which a reasonable crew member should be expected to bear in the context of the environment in which the crew member discharges their duties.

[17] This is an objective test so it does not include consideration of [the victim's] particular sensibilities; she said in evidence that she was about five to six months' pregnant at the time and that she and the other crew were all very tired after a few days of international flying.

[18] I consider that behaving in a disorderly manner towards a crew member is not limited to behaviour directed at a crew member in his or her presence. While that would no doubt often be the factual basis for this charge, disobedience or contempt of a crew direction once the crew member has moved out of sight or hearing must surely be capable of amounting to behaving in a disorderly manner towards the crew member who issued that direction. It seems to me there is a useful analogy here with contempt of court. Section 212 of the District Court Act 2016 provides:

**212 Contempt of court**

- (1) This section applies if any person—
- (a) wilfully insults a judicial officer, Registrar, officer of the court, juror, or witness during his or her sitting or attendance in court or in going to or returning from the court; or
  - (b) wilfully interrupts the proceedings of a court or otherwise misbehaves in court; or

- (c) wilfully and without lawful excuse disobeys any order or direction of the court in the course of the hearing of any proceedings.
- (2) If this section applies,—
  - (a) any constable or officer of the court, with or without the assistance of any other person, may, by order of a Judge, take the person into custody and detain him or her until the rising of the court; and
  - (b) a Judge may, if he or she thinks fit, sentence the person to—
    - (i) imprisonment for a period not exceeding 3 months; or
    - (ii) a fine not exceeding \$1,000 for each offence.
- (3) Nothing in this section limits or affects any power or authority of the court to punish any person for contempt of court in any case to which this section does not apply.

[19] Subsection 212(1)(c) clearly encompasses disobedience of a judicial direction after the judge has left the court during a hearing, such as a direction to a witness not to discuss their evidence during an adjournment. In the same way, a deliberate failure to follow a crew direction after initial compliance in his or her presence could surely constitute a form of contempt and behaving in a disorderly manner towards that crew member. I note that s65G(4) provides a defence to a prosecution under ss(1)(a) if a defendant had reasonable grounds for believing his or her offensive words would not be overheard by a crew member. That there is no such defence in respect of a prosecution under s 65G(1)(b) reinforces the conclusion that disorderly behaviour towards a crew member need not be witnessed by that, or another, crew member.

**Does the prosecution need to prove that Mr Gallon intended to behave in a disorderly manner?**

[20] Although this was not an issue raised by counsel in submissions, I have considered it. I note that the offence under s 65G(1)(d) of intentionally interfering with the performance by a crew member of his or her duties is a charge which expressly requires proof of intention; consequently it carries a much more significant penalty, a term of imprisonment not exceeding two years or a fine not exceeding \$10,000. By contrast the offences created by s 65G(1)(a), (b) and (c) do not expressly mention intention and the penalty is a \$5,000 fine only.

[21] If Parliament had intended s 65G(1)(d) to require proof of a specific intent it would have included one, as it did in ss (d). I am therefore satisfied that the prosecutor does not have to establish that Mr Gallon intended to be disorderly, only that he intended his conduct i.e. it was not involuntary or accidental.

### **The ground rules for considering the charge**

Although this charge is not serious as indicated by the maximum penalty it is obviously a criminal charge and the same fundamental rules apply to its determination as apply in any criminal case. The onus is on the prosecution to prove the case and to do so, as to each of the elements of the charge, to the very high standard of beyond reasonable doubt. Mr Gallon, having the presumption of innocence, had no obligation to give or call evidence and having done assumed no onus. I must consider his account along with all the other evidence. In principle, although in practice this may not apply directly in these circumstances, I must acquit Mr Gallon unless I am sure I can reject what he says.

### **The evidence in more detail and any necessary factual findings where there is dispute**

[22] [The victim] said that the family (parents and the approximately 12-months old baby) was sitting in row 6, in seats A, B and C. Mr Gallon was across the aisle but in the window seat, 6F. He first came to her attention when the father called her over. Mr Gallon was talking to the family, saying that what they were doing to the child was not okay and that it was a form of child abuse. The child was screaming and crying and the parents were giving it a bottle but also placing a hand on the baby's chest. [The victim] could see that Mr Gallon was clearly very concerned about the way the child was being treated but in her assessment there was absolutely nothing of concern in what the parents were doing. She said it was a night flight and they were trying to get the child to sleep by giving it a bottle. She said that it was common practice in these circumstances to place a hand on the chest or back of the child as a comfort. The incident arose about an hour and a half into the three and a half hour flight which was scheduled to arrive in Wellington about midnight.

[23] [The victim] asked Mr Gallon to return to his seat and he did so, while explaining to her that he did not consider the child was being appropriately cared for. He used the term abuse, in the sense that he saw it as a form of child abuse. [The victim] said that at that stage he seemed genuinely concerned about the child and “a little bit agitated” about the situation.

[24] After obtaining the family’s reassurance [the victim] left the area but kept her eyes on the situation. She could see Mr Gallon was still talking to the family from his seat. I observe at this point that there was no evidence from [the victim] that she told Mr Gallon not to continue to discuss the issue with the family but on the other hand there is a clear inference to be drawn that he ought to have understood that he should not, given he had drawn the issue [the victim’s] attention and had been asked by her to return to his seat.

[25] Having seen Mr Gallon continue to talk to the family [the victim] informed the pilot about the situation. She explained that there is a general strategy at Air New Zealand where there is a disgruntled passenger; at first the crew are “fair” with them and then if necessary they move to being “firm and final”. At this early stage [the victim] simply informed the captain that a situation was starting and that she would keep him informed.

[26] After this, [the victim] saw Mr Gallon had again stood up and that he had resumed talking to the family, standing in the aisle. [The victim], as is required, obtained the pilot’s permission to move Mr Gallon to another seat. She then went with another crew member, both as support and as a further witness, and asked Mr Gallon to move to seat 2A. [The victim] said that Mr Gallon was continuing with the comments he had made earlier but on this occasion he used the phrase “child torture”. Again, [the victim] had no concerns about the way the family were treating their child.

[27] Mr Gallon said his move from row 6 to row 2 resulted from an offer by him rather than a requirement by [the victim]. Indeed he said that he had to ask her twice for a new seat to be assigned. She had not come back, after he agreed to move, for four or five minutes, which is why he pressed the crew call button, to find out what

was happening. He denied that [the victim] had required him to move because she was concerned about his continued engagement with the father.

[28] Again, it is not necessary to resolve this factual dispute, there being no dispute that Mr Gallon did voluntarily move to row 2, but it is consistent with [the victim's] concerns about Mr Gallon not staying in his seat and continuing to talk to the family that she sought and obtained the pilot's permission and that she would have initiated the move.

[29] Mr Gallon complied with the request to move to row 2 but continued to repeat his assertion about the child being tortured and, she says, he added that [the victim], by not doing anything about the situation, was condoning their behaviour. [The victim] went to report to the captain what was happening.

[30] In accordance with standard practice, while [the victim] was in with the captain, another flight attendant stood near the flight deck so that no passengers could use the toilets or get past into the flight deck. [the victim] said at this point Mr Gallon started using his cellphone to video or take photographs of the crew. In evidence, Mr Gallon denied using his phone to do other than record the actions of the parents in relation to their child. He said he did not take video or photographs of any crew member. While again I do not consider it necessary to resolve this factual dispute, I observe that this was said to have been done from row 2 and that video or photographs were taken in respect of [the victim] and the other crew member in the forward galley, forward of row 2. Accordingly, while there may have been images taken of the family at an earlier stage, the use of the cellphone in that forward part of the aircraft can only have been to record the crew; that is also consistent with Mr Gallon having sought and noted down [the victim's] details. His concerns were not limited to the family but extended to what he saw as her wrongful failure to act on those concerns.

[31] Mr Gallon then frantically wrote a note to the pilot. [The victim] described him as demanding her attention constantly pushing the call bell and asking that she pass his note to the pilot. She said the call button was pushed four or five times but there was only one note involved.

[32] The note was produced in evidence and read:

“Sir, I am concerned for the well-being of the child in row 6, who has been restrained against its will, to the point of tears. [The victim] has refused to allow me to ensure that it is not still being so treated, and I can hear some resemblance of screams over the noise of the aircraft.

If you will not assign supervision to the child, then you are choosing to tolerate child abuse. Please, do not treat lightly, the abuse of children in your aircraft.”

[33] [The victim] did not read the note at the time but did immediately pass it on to the captain.

[34] [The victim] described Mr Gallon as becoming more and more persistent towards her. He repeated that she was condoning the abuse and the torture. She asked him if he could just remain in his seat and keep to himself. At this point she said she was starting to get quite frightened, quite shaken up. As she was five to six months pregnant at the time she felt that it was something of a safety issue for herself. At this stage [the victim] said that Mr Gallon’s conduct was entirely directed towards her because he had been moved quite far away from the family.

[35] As a result the pilot told [the victim] it was time to issue the final warning. She produced the handcuffs and said to Mr Gallon that this was his final warning and that if his behaviour did not settle down, ultimately he would have to be restrained and that the police would be meeting the aircraft when it landed in Wellington.

[36] She says that as soon as the police were mentioned and that they were going to be meeting the aircraft Mr Gallon became very compliant and did keep to himself. In evidence, Mr Gallon denied being told at any stage that the police would be waiting to meet him at the airport. He does however accept that he was told to remain in his seat. [The victim] said that when she was giving the captain Mr Gallon’s note, after he had been given the final warning, he got out of his seat and was headed towards row 6 when her fellow flight attendant moved away from her security job protecting the flight deck to stop him from getting to row 6. Mr Gallon denied that he was stopped by a flight attendant but accepted that he was intending to go to row 6. He said the reason he did not get there was that there was a service trolley in the aisle. [The victim] denied that there was any such trolley in the aisle at that stage of the flight.

[37] [The victim] said that even after the final warning Mr Gallon was upset and behaving in a bullying, disgruntled manner towards the crew and still trying to get back to row 6 to see the family and to push past the crew member.

[38] Overall, [the victim] said that this was a full flight with about 170 passengers and a total of 4 crew in the cabin. Because of Mr Gallon's actions she, and for a time one of the other crew, were preoccupied with him for most of the second half of the flight.

[39] In cross-examination [the victim] accepted that there had been no physical contact between Mr Gallon and any of the crew, that he had not threatened her with violence and that he was not drunk or indeed consuming any alcohol. [The victim] agreed that Mr Gallon had genuinely been concerned about the baby but said she did not agree with his concern, rather she agreed with the parents' concern about his interfering with them.

[40] Mr Gallon in his evidence explained that although he is not a parent and has no experience in caring for a child, he was concerned at the child's screaming which he could hear despite listening to the inflight entertainment with headphones on. He formed the impression that the mother and father appeared to be intentionally ignoring the baby and after initially not seeing the baby himself he stood up and noticed that it was lying on its back with its head and neck over the armrest with the mother's arm pinning the child's throat against the armrest.

[41] Mr Gallon, who clearly holds strong Christian beliefs, consulted his bible to find out what was the will of God for him to do in the circumstances. He said he learnt that God was against oppression and for justice so he had the confidence to stand up and see why the child was so distressed.

[42] When [the victim] arrived on the scene he asked her to "bear witness" to the improper treatment of the child, which he says she declined to do. In cross-examination he said that it appeared to him a child was being "oppressed" and he needed to act. He agreed he had used the phrases "child abuse" and "child torture". Mr Gallon denied that [the victim] told him to stop talking to the father. I am inclined

to accept his evidence on that point as she did not say in her evidence that she had directly told him that.

[43] Mr Gallon said that when the behaviour towards the child by the parents did not change he decided he would raise the issue with the authorities when the plane landed. To that end he decided to record some video footage evidence of the way that the child was being treated. As I have noted, he denied taking video footage of any crew member.

[44] Mr Gallon denied that he had told [the victim] that she was condoning the child abuse by not doing anything but accepted he did say that he would report the parents to the authorities and that he was going to report her as well because she had refused his request to “bear witness” to the way the child was being treated.

[45] In relation to getting up from his seat in row 2 and trying to go back to see the father again he said that was because he could still hear the sound of the child screaming over the aircraft noise. He was therefore still concerned about the child’s welfare. He had not seen any appropriate response from the crew so he wished to go back to row 6, knowing that the father had in fact released the child after he had initially spoken to him. He thought that his presence would be helpful as a support for the child, that he would “bring it peace”. As I have noted, he says the reason he was not able to get there was because of the trolley being in the way. He denied he was stopped by a crew member.

[46] Mr Gallon denied being intentionally intimidating or violent towards [the victim] or any other crew member. He accepted that she had had to spend the second half of the flight dealing with him but said that did not have to happen because if she had agreed to “bear witness” that would not have been necessary. He accepted that he was “appalled” by how the flight attendants were acting, or more accurately not acting, and he agreed that he was “a bit angry” about that which is why he wanted to report them. He said in answer to a question from me: “Whenever there is an abuse of a position of power for an unjust and wicked reason it tempts me, my temper is strained by that ...”

[47] Later in evidence he described both the conduct of the parents and the flight attendants' lack of response as "wicked".

## **Discussion**

[48] While there are as I have noted several factual disputes I do not consider it necessary to resolve them or to make express findings of credibility and reliability in respect of either of the key witnesses, [the victim] and Mr Gallon. That is because I consider that the undisputed aspects of Mr Gallon's conduct towards [the victim], in combination, did cause anxiety or disturbance beyond that which a reasonable crew member ought to be expected to bear.

[49] I readily accept that from time to time crew members and inflight managers must put up with quite a significant degree of unreasonableness, improper behaviour and even some abuse from passengers, but I have no hesitation in finding that Mr Gallon's conduct overall was beyond the pale and was such as to establish the charge.

[50] I have no doubt that Mr Gallon's actions were entirely driven by his genuine concern for the child. That was obvious to me from the way he gave evidence. Indeed it was confirmed by the note he wrote to the pilot at the time. He clearly did not set out to, nor did he in my assessment at any stage intend to, create anxiety or a disturbance through behaviour directed towards [the victim]. However, as I have noted, it is not necessary that the prosecution prove he had any such intention. He undoubtedly engaged in conduct which had the requisite effect even if he did not intend that effect. It is, and was I find on this occasion, perfectly possible to be at once both expressing genuine concern about something and behaving in a disorderly manner towards a crew member.

[51] I accept too that [the victim] was genuinely distressed and upset, indeed somewhat fearful for her safety at the latter stages of the incident. That is not directly relevant given the test is objective but I nevertheless consider it a relevant part of the evidence. [the victim] was at the time a flight attendant of some five years' experience;

she had been an inflight manager for three years. She had not previously had occasion to administer a final warning.

[52] Leaving aside her pregnancy and tiredness, which must be seen as particular personal sensibilities, I consider she embodies a reasonable crew member. She was no doubt experienced at dealing with awkward and unreasonable behaviour by passengers and at having overall responsibility for any such behaviour as inflight manager. The fact that she was subjectively distressed to the extent she was supports the conclusion that objectively a reasonable crew member in her position would also have been disturbed beyond the level which might reasonably be expected and tolerated.

[53] The main reasons for my conclusion that the charge has been proved beyond reasonable doubt are as follows.

[54] While Mr Gallon was obviously compliant with direct crew instructions, first to return to his originally allocated seat 6F and later to move to seat 2A, which is the converse of behaving in a disorderly manner towards a crew member, his continuing to remonstrate with the father after being asked to return to his seat, including initially talking from his seat and then standing up again and moving to the aisle next to the family, was material disobedience of the direction to return to his seat even if, as I have accepted, there was no direct instruction not to talk further to the father.

[55] The manner of his talking to the family was also abusive, referring to both child abuse and child torture in a closely-confined space. While that was not directed at [the victim], it followed a direction made by her arising from Ms Gallon's initial expressions of concern to the family, so that in that sense it was a contemptuous of her effort to stop Mr Gallon saying anything further to the family, let alone something abusive. His conduct continued unabated. [The victim] was entitled to expect that Mr Gallon, having made his concerns known to her as inflight manager and been told to return to his seat, would leave the matter in her hands. Most concerned passengers would have left it at that. He patently refused to accept her authority and her assessment of the situation, because he disagreed with it. He was by his overall

conduct disobedient and disrespectful of her authority, even if not “to her face”; he would not let the matter lie.

[56] Again, while Mr Gallon did comply with the request to move to row 2, he continued to say that the child was being tortured and he took actions designed to allow him to raise his concerns both about the parents and about [the victim] once the plane landed. That in itself might not be seen as behaving in a disorderly manner towards her but rather as appropriately deferring action for a later and more suitable occasion. However, [the victim] said he continued to say that she was “as bad as the parents”, that she was condoning what was going on and the behaviour of the parents towards the child.

[57] While Mr Gallon denied expressly saying that, I have no difficulty accepting [the victim’s] recollection of what must have been unusual and memorable comments for her to have received. She would not have progressed matters to the stage of arranging with the pilot for the presentation of the handcuffs and the final warning accompanying them and the reference to the police meeting the plane when it landed, had she not been met with ongoing criticism from Mr Gallon. He acknowledges his level of anger at the attitude of [the victim] and the other crew. She was not challenged in cross-examination about her evidence that even after the final warning Mr Gallon was behaving in a bullying disgruntled manner towards the crew and still trying to get back to row 6.

[58] Whether or not Mr Gallon was prevented by the trolley or by the crew member in achieving his undoubted goal of returning to row 6, his effort to do so was clearly, and arguably on its own sufficiently, behaving in a disorderly manner towards [the victim] and the other crew member who was assisting her. He was moved to row 2 to avoid any further contact with the family after his concerns had been noted but rejected by [the victim]. In attempting to re-engage with the father, objectively Mr Gallon’s conduct was behaving in a disorderly manner towards [the victim] both in respect of her moving him to row 2 and in respect of her final warning for his behaviour.

[59] Mr Gallon acknowledges that he was angry at this point and I find that he behaved accordingly. He was clearly appalled (his word) by the absence of response

by [the victim] and other crew and he was not willing to let their assessment of the situation govern it. This is reflected in his note to the pilot in which he referred to [the victim's] "refusing to allow him" to ensure that the child was no longer being inappropriately treated. In effect, he was determined to do what he saw as the right thing by the child despite the crew having made an assessment that his concern was misplaced. Again, this was a form of contempt of the crew's authority. While compliant with direct instructions, Mr Gallon continually acted in defiance of [the victim's] assessment that there was no reason for concern about the way the parents were treating the child. Indeed, he went further in his rejection of her authority and of her assessment in his note by both repeating his criticism of her to the captain and in threatening him that he too would be complicit if he failed to act.

[60] I do not find that the recording by cellphone of the crew, if indeed it occurred, was in itself disorderly behaviour because I accept it was consistent with Mr Gallon wanting to record evidence of his concerns for consideration at a later stage. Rather, it is the other conduct I have identified, in particular the persistent verbal assertion by Mr Gallon, despite being moved and despite being warned, that the crew had not responded appropriately and were in effect complicit in the child torture he considered was occurring.

[61] The combination of the conduct I have identified, even on Mr Gallon's version of events where there is dispute with that of [the victim], is in my view clearly sufficient to establish that he behaved in a disorderly manner towards her at a level beyond which a reasonable crew member should be expected to bear.

[62] As I have noted, I accept that he acted generally with genuine concern about the child's welfare and that he may well not have intended to be disrespectful or disorderly to [the victim], because he believed he was right and she was wrong. Nevertheless, on an objective view of his conduct towards her, directly and indirectly, he created a disturbance and created anxiety beyond the acceptable level.

[63] For these reasons I am satisfied beyond reasonable doubt that the requisite elements of the charge are proved. I find it proved that Mr Gallon was in an aircraft,

namely on Air New Zealand flight NZ850, and that in that aircraft he behaved in a disorderly manner towards at least [the victim], if not another crew member.

[64] Mr Reeves indicated that if I found the charge proved he may wish to apply for a discharge without conviction on Mr Gallon's behalf. Accordingly I have entered no conviction. I request that the registrar arrange a sentencing date before me (20 June at 2.15pm would be a possibility).

[65] If there is to be an application for a discharge without conviction then there will need to be affidavit evidence as to the consequences which would flow from the entry of a conviction, as opposed to from the conduct itself, together with submissions. Those are to be filed and served at least 14 days before the sentencing date.

[66] In that event, the prosecutor is to file and serve at least 7 days before the sentencing hearing any affidavit evidence and submissions in reply and as to sentencing generally, in case I conclude there should be no such discharge.

S M Harrop  
District Court Judge