

that Mike, when he did make a decision, did not seem to be making them on any objective basis. To both crewing and ops control staff and to me later he demonstrated an unwillingness to operate the assigned duty and after completion of this duty to operate the subsequent duty. His original intent to divert was based on the premise that the duty was unreasonable from an FRMS perspective based on previous duties not seemingly his current fitness to fly. His subsequent decision to continue to destination following advice that no rescue crew were available was thus inconsistent. Similarly, the assumption that he would now be fatigued for the subsequent duty reinforced the appearance that he was dictating to operations that in order to go into discretion he would require the next day off".

35. Mr Scadeng said that this email gave a different flavour to events. Mr Thorington's email appeared to suggest that there could be some wrongdoing and led Mr Scadeng to believe that there was scope for a wider investigation. Mr Scadeng passed this to Jo Smith. He said he did not suggest to Jo Smith what she might do with it but left it in her capable hands. Unfortunately, Jo Smith was unable to give evidence to this Tribunal due to illness.

36. Mr Thorington had written in his email that he had asked for an FRMS analysis of the claimant's duties and plans for the schedules and asked that these be sent to Mr Scadeng.

37. The claimant filed a fatigue form on 7<sup>th</sup> May. The claimant wrote "due to my previous day's roster and changes and due to the fact that the day previously I utilised Captain's discretion due to the company not fulfilling an agreed process I was extremely tired bordering on fatigued at the end of the discretion duty". He wrote that he rang crewing at the end of the duty to inform them that, in all probability, he would not be available for the next flight due to fatigue and was put through to the management Pilot. He wrote that the management Pilot said he could not know that he would be too tired to operate the next day; he could not make that decision until after he had slept. The claimant wrote that he had rung crewing early to allow them to re-plan at an early stage. The claimant wrote that, on getting home, he went to bed at around 23.45 local time and woke up at 5.30 am local time "no doubt due to the number of early starts that I had completed earlier". He wrote that he was unable to get back to sleep for what was the rest of the night; he rang crewing at 9.30 am local time to confirm, as he had predicted the previous night, that he would be unable to perform the next day's duty due to fatigue. He wrote that the flight he was rostered, but felt he would be too fatigued to complete safely, was due to commence at 11.55 z and that this would only give 55 minutes over the minimum rest period from the previous days' duty. The flight was rostered to finish at 22.40 z. He wrote that the main contributing factor was roster disruption and additional contributing factors were start time and finish time. He gave details of his previous simulator duties. He wrote that the subsequent flight was rostered to the maximum permitted FDP of 12 hours 30 "however it was clear from the initial PLOG this was "optimistic" to say the least as the PLOG showed us returning approximately 20 minutes into discretion. Even at maximum high speed cruise the plans still had a duty period in excess of the legal FDP. Due to the promised crew for the diversion due to FDP issues not being made available on the return leg home which I had been assured would be available before I left Manchester due to this late change in "circumstance" i.e. as per FTL 7.18.1 "the extension shall be calculated according to