

what actually happens not on what was planned to happen" I elected to operate into discretion on the return leg. The subsequent conversation with crewing then a conversation with the Duty Pilot over exactly what Captain's discretion actually allowed caused a further delay in finishing the duty". He wrote "the duty of today would have been operated without me being sufficiently rested due to length of the previous day and the previous two days' very early starts. When I did finally get up, I did feel extremely tired and lacking energy and considering the length of the day's flight, I made the only safe judgment that I could possibly make in that the flight would not have been operated to the same level of alertness and therefore safety that would be required due to fatigue if I had operated the rostered two flights".

38. As additional remarks, he wrote "ensure that a flying duty has a realistic FDP attached to prevent situations like this happening again and for the company to actually look what the series of previous duties were undertaken by crew before they make a decision on who will operate a particular duty in the event of being called out from standby".

39. In the morning of 9th May 2014, Jo Smith informed the claimant in a telephone call that he was suspended. The allegation put to the claimant was that he refused to operate a rostered duty and that this was potentially gross misconduct. The implication of the allegation as expressed was that the claimant was being accused of lying about being fatigued on 7 May.

40. The suspension was confirmed by a letter dated 9th May 2014 which set out the allegation as follows: "allegation of refusal to operate a rostered duty – TCX2684/2685 on 7th May 2014." It appears likely, from the evidence of the respondent's witnesses, that the decision to suspend the claimant and the formulation of the allegation was made by Jo Smith on advice from HR. Mr Scadeng said he did not discuss with Jo Smith whether the claimant should be suspended after an investigation commenced. Jo Smith was going on annual leave so was unable to carry out the investigation. Jo Smith asked Jo Burke, who was, at that time, a Flight Crew Manager in the Flight Operations Department, to carry out the investigation. The claimant had already been suspended and the allegation formulated when Jo Burke was asked to investigate.

41. Since we were unable to hear from Jo Smith, the tribunal was not given an explanation as to what caused the respondent to suspect that the claimant was lying about being fatigued and why the decision was taken to start disciplinary proceedings. Given the timing of events and the evidence of Mr Scadeng that Mr Thorington's e-mail gave a different flavour to events, the explanation appears to lie in the views of Mr Thorington as expressed in his e-mail to Mr Scadeng.

42. On 15th May 2014, Jo Burke sent an email inviting all of those who were on day/night shifts on 6th and 7th May 2014 to a meeting to ask them if they had any conversations with the claimant over the course of their shifts in those two days. Jo Burke held investigation meetings with various employees of the respondent in a period from 16th May until early June 2014. She held all these meetings before having an investigatory meeting with the claimant. Ms Burke did not meet with Roger Scadeng but sent him questions by email, since he was on leave. The notes in the bundle are undated, although the index attributes a date of 11th June to the