

notes. The respondent has not included in the bundle the emails themselves, so it is impossible for the Tribunal to see when the questions were sent and when they were answered. The format of the notes relating to Mr Scadeng gives a misleading impression that Mr Scadeng was interviewed, rather than responding by e-mail to e-mailed questions.

43. Those interviewed included Gareth Harvey, who had spoken with the claimant over the high frequency radio during the flight on 6<sup>th</sup> May. Mr Harvey is recorded as saying that the claimant had said that he would carry on to Manchester, he said that "because he had gone to discretion he would come off his duty tomorrow, I can't recall him saying he was fatigued". Mr Harvey said he could understand the claimant's "beef" with the duty. He commented "it is right on the max but it is legal".

44. Jo Cavanagh said that he had received a call from the claimant on 5<sup>th</sup> May and the claimant had said the flight the following day was rostered using maximum hours and "just to let you know that he won't be using any discretion due to the busy week he had".

45. Martin Lamb said that he had received a call from the claimant on the day of the flight. The claimant asked where he would like him to divert to. The claimant said the flight had been rostered for maximum allowable FDP and, on today's flight times, it was into discretion and he was not willing to operate into discretion. Mr Lamb said that he told the claimant it was rostered legally but he would speak to Ops and he would come back to him. The claimant said initial plans were 20 minutes into discretion.

46. Pete Wanless received a call on 7<sup>th</sup> May, three hours ten minutes before report time. The claimant told him he had called the previous day to say he felt fatigued after his preceding run of shifts and, as requested, was calling back in to say he was still fatigued. Mr Wanless told him he would mark him off the roster and asked him to fill in what was required of him when fatigued and the claimant said he would.

47. Peter Lloyd said the claimant spoke to him on 6<sup>th</sup> May. He said he was not using discretion and started to tell Mr Lloyd why but Mr Lloyd stopped him because it did not really matter what he said to him, he needed to tell Crewing. Mr Lloyd said he told the claimant to divert to the UK, preferably Gatwick, but he did not mention anything about crew. Mr Lloyd said that the claimant had talked to Gareth during the flight; the claimant mentioned to Gareth that he may be tired for the next.

48. Mr Thorington said that Gareth told him that the claimant had just told Gareth that, if he went into discretion, he was not going to operate the flight the next day.

49. Mr Thorington spoke about his telephone conversation with the claimant on the evening of 6<sup>th</sup> May: the claimant told him that the roster he had done was one that was fatiguing; the claimant told him that he had informed Crewing, once he had seen the roster with the duty, that he believed there was no way that this was attainable within normal FDP. He was clear that he believed the duty had been manipulated to fit into an FDP. The claimant informed Mr Thorington that, in his opinion, he would not be fit to fly on 7<sup>th</sup> May. Mr Thorington said that he believed this was premature. He asked him to go home, get a good night sleep and, if he felt he was not fit for duty