

towards the end to give his professional opinion on the impact of the claimant's run of duties. Jo Burke outlined the allegation as had been set out in the invitation letter. The claimant was asked about high frequency transmissions on the Antalya to Manchester sector of the flight. The claimant said that they had established that they were, despite their best efforts, going to be over the duty time on the return to Manchester. He said "as I had already spoken to Crewing previously that I would not be legally entitled to continue the duty as it ... at the beginning of the duty period due to the flight times that it was agreed that there would be a crew positioned because I had already strongly suspected we were going into discretion and as we wouldn't be able to go into discretion we would have to divert".

56. The claimant said he had been told at the beginning of duty by Crewing that there would be spare crew if they diverted but, when he told them that they were still going to go into discretion and needed to divert, he was told that they did not have the spare crew. The claimant said that, when he arrived at the airport and got the PLOGS, the PLOGS showed that the flight would be 15 to 20 minutes into discretion by the time they got back to Manchester. He said it had been planned to go into discretion by 20 minutes. He said he told Crewing he could not go into discretion. They then produced another flight plan with maximum speed but, even then, it was going to go over the maximum duty time. The claimant said "Now as per the extension should calculate what actually happened not what was planned to happen I could not at that point depart that point at go, knowing I would be going into discretion. The only reason I agreed to go into ... to depart MAN that day was because a) I had been assured that there would be a crew to aircraft up and on the off chance that I could knock down some of the turnaround times down route, but I couldn't go to discretion". He said he told Crewing about this and the only reason he continued the duty was that he was told that they did not have the crew. He had been told that they had and now they didn't so now he was in a position [to exercise his discretion]. The claimant said that, when he called back on the high frequency radio, he said that, because he was extremely tired with the run of previous duties, he wanted to give the company advance notice that, in his opinion at that time, he would not be fit to do the next day's duties. He said he did that to make sure they had enough time to re-crew it.

57. The claimant said he confirmed this when he landed at Manchester, speaking to Captain Thorington. The claimant said he was sure he would not be OK to do the next flight because of his duty pattern and also said there was a personal aspect which was very important that the company was not yet aware of. The claimant said that, in his conversation with Captain Thorington on the evening of 6th May, they had a disagreement about discretion. He said they had had a disagreement about discretion before and this had a bearing on discretion on 6th May. The claimant referred to the flight in Goa in April 2011. Jo Burke asked whether this was discussed on the day. The claimant said it was not, but the reason it was important was because this was the definition that he had worked to, and had been supported by the CAA, as regards to discretion, which was at odds to Captain Thorington. The claimant said he did not tell Captain Thorington about his personal problem in the conversation on 6th May.

58. The claimant quoted regulations which state that crew members will not act as operating crew if they know or suspect that their physical or mental condition renders