

terms, what was going on. He sat near Mr Thorington in the office. He was the recipient of e-mails from the claimant and Mr Thorington about the events. He was asked questions as part of the investigatory process by e-mail, although this was concealed from the claimant, whether deliberately or inadvertently, by the omission of reference to this in the investigation report sent to the claimant.

67. On 26th August 2014, Helen Harrigan, HR Consultant wrote to the claimant informing him that the disciplinary hearing would take place on 29th August, to be conducted by Roger Scadeng. The letter stated that the meeting had been arranged to discuss the following allegations:

“As Captain of flight TCX2148 on 6th May 2014, in protest at the flight having, in your view, been rostered to exceed the maximum FDP, you told Gareth Harvey in Operations that you refused to work 15 extra minutes discretion to land the aircraft at its destination, the result of which would have been to force the aircraft to divert resulting in the potential for increased risk to safety, substantial additional cost and passenger inconvenience.

“On 6th and 7th May 2014 you refused to work your duty on 7th May in protest at your flight on 6th May 2014 having, in your view, been rostered to exceed the maximum FDP. You dishonestly stated that the reason for refusing that duty was fatigue.

These are being considered as potentially gross misconduct offences as refusals to comply with reasonable management instructions”.

68. We did not hear evidence from the respondent as to who formulated the allegations and why these included a second allegation which had not been put to the claimant as being a matter for investigation. Jo Burke said that she had no further involvement in this after handing over the investigatory report and that she did not formulate these allegations. Mr Scadeng said that he had no part in formulating the allegations.

69. With the letter of 26th August was enclosed a copy of the investigation report and supporting documentation. There are a number of versions of the investigation report in the bundle. None of the respondent's witnesses were able to assist us as to which was the version sent to the claimant. One version omitted Roger Scadeng from the list of those from whom witness statements had been taken. An email sent by Karen Harrigan to the claimant on 26th August listed documents attached to that email. She listed meeting notes which were sent. The notes of the questions and answers from Roger Scadeng were not listed there. This suggests that the version of the investigation report sent to the claimant was that which appears at page 450, which does not include Roger Scadeng in the list of those from whom statements were taken. We had no explanation as to the omission of Roger Scadeng's notes from the list. The investigation report front sheet, which Jo Burke told us would have been in the front of the file for the assistance of anyone dealing with the matter, does list Roger Scadeng under the heading “witness statements”, stating that he was emailed as on leave. We had no evidence that this front sheet was sent to the claimant. The claimant in his comments sent to Roger Scadeng prior to the disciplinary hearing noted that Roger Scadeng had not been interviewed, which