

suggests that the copy of the investigation report sent to the claimant did not include Roger Scadeng in the list of witnesses. We find, on a balance of probabilities, that details of the questioning of Roger Scadeng as part of the investigatory process were not included in the investigation report sent to the claimant. The respondent has not provided an explanation for this omission.

70. Jo Burke said in evidence that she understood from the material that the claimant had been raising the issue of legality. However, she said she did not discuss this view with the claimant. She asked people in crewing and operations whether it was legal. They said it was and she left it at that. She said she appreciated that there was an issue about whether the roster alone had to be within maximum FDP or whether the plans on the day also had to be within the maximum FDP to be legal. However, she said the absence of any reference to this in the report suggests she did not take a view on this.

71. Under the heading "recommendations" in the investigation report, Jo Burke wrote: "During the investigation I found that Mike's decision making started two days before the allegation of refusal of a duty and was not made based on fatigue. He was not satisfied how the flight had been rostered/scheduled and made this clear. He also showed that he never intended to go into discretion, not only from the beginning of the duty but the day before. He asked where the company wanted him to divert to when he reported. The decision making process was not what would be expected from a Commander. His decisions also had an impact throughout the date on the rest of the organisation". Jo Burke's evidence did not explain the basis for these conclusions. She recommended that the matter be reviewed further under formal disciplinary meeting.

72. The disciplinary hearing was re-arranged for 6<sup>th</sup> October to enable the claimant to attend with a representative.

73. On 29<sup>th</sup> August 2014, the claimant wrote to Ian White and Richard Minashi asking them to comment on a proposed whistle-blowing report for the CAA. In his covering email he wrote: "I will also be raising the issue that I believe that Thomas Cook Airlines conspired in an attempt to coerce me to commit a criminal act and break current UK law in relation to FDL in that I was expected to fly a duty that had been illegally planned".

74. On 2<sup>nd</sup> October 2014, the claimant sent to Mr Scadeng a pack of documents which he intended to present at the disciplinary meeting. He suggested that Mr Scadeng carefully read and digest the entire contents of the folder of documents before the disciplinary hearing to ensure that there was no mis-understanding or mis-hearing or disagreement during the meeting on what had been alleged and the claimant's response to the allegations. In a document headed "direct rebuttal of Thomas Cook's accusations," the claimant noted, amongst other things, that in his email to Roger Scadeng on 7<sup>th</sup> May and in his voyage report of 6<sup>th</sup> May he had raised questions about how the FDP of 12 hours 30 had been calculated and that he had received no response in four months. He asserted that there could not be a reasonable management instruction to extend an FDP and that it was very clear that it was only the Commander who was able to extend a flight duty period beyond the maximum FDP allowed by current CAA regulations. It was the Captain's decision