

alone whether to exercise his discretion. The claimant argued that he did not refuse to utilise discretion as a protest but initially refused because it would have been in breach of provisions which he detailed. He quoted "the extension shall be calculated according to what actually happens not on what was planned to happen". He asserted that the flight had been planned into discretion by his calculations and confirmed by two flight plans presented to him on 6<sup>th</sup> May. Even with non-standard maximum cruise speed for a Boeing 767, the flight plans still showed a breach of the legal maximum FDP. The claimant asserted that the initial planned FDP was outside the legal maximum, therefore the "plan" before departing Manchester was to divert on route if the duty was predicted to exceed the legal maximum and have another flight deck crew meet the aircraft to fly the leg to Manchester. The claimant said he was informed on an Antalya to Manchester leg that the company could not provide the required crew. He wrote "the only reason therefore I was now legally allowed to operate into discretion was what was "actually" happening was different to what was "planned" to happen when we left MAN i.e. the plan to have crew meet the aircraft had now changed to "actually" the company had not provided the required flight crew". He wrote that, due to this, he had ultimately exercised discretion.

75. In relation to the second accusation of refusing to work duty on 7<sup>th</sup> May in protest and dishonestly stating that the reason for refusing that duty was fatigue, the claimant asserted that he did not refuse to work the duty as a protest but refused due to the fact he suspected he would not be fit to fly the duty of 7<sup>th</sup> May due to fatigue and that, if he had operated the duty of 7<sup>th</sup> May, he would have committed a criminal act. He wrote that the only relevant legal view on whether he was fit to fly was his own. Further details included by the claimant referred to preceding duties and dealing with the ramifications of a very serious family medical issue. The claimant asserted that Thomas Cook's own software appeared to confirm that he would have been unfit to fly the full duty of 7<sup>th</sup> May to the required level of safety. He wrote that, at the time he would be landing back into Manchester late at night on 7<sup>th</sup>, the trace shows to be deep into the amber caution zone and only just above the red zone. The claimant referred to comments made by Thomas Cook Duty Pilot Manager, who was Mr Thorington, and wrote that Mr Thorington had been severely reprimanded by the CAA in 2011 following an issue the claimant had raised that was very similar to the situation the claimant currently found himself in. The claimant wrote that he would leave Mr Scadeng to draw his own conclusion as to the impartiality and rationale of the comments made by Mr Thorington.

76. In the pack sent to Roger Scadeng, the claimant made it clear that his view was that the flight on 6<sup>th</sup> May had been planned over the legal maximum FDP and, if he had agreed to utilise discretion at the end of the day before he left Manchester, this would have been in breach of CAP 371 Section 18 and Thomas Cook OMA Section 7.18.1. The claimant expressed his view that the only legal way he could commence that flight was with the understanding that he would have to divert and he asserted that he had been informed that another flight crew would be found to meet the aircraft and continue the flight onwards to Manchester.

77. The claimant wrote that he had informed the respondent during the flight of his unavailability for duty on 7<sup>th</sup> May in an attempt to minimise disruption by giving the company the maximum possible time to re-crew the flight. He wrote that, because he had elected to continue the flight using discretion, the respondent might be under