

the incorrect impression that, because “legally” based on FTL he could operate the flight on 7<sup>th</sup> May, he would be fit enough to complete the flight and he suspected that this actually would not be the case. The claimant asserted that, although Mr Scadeng was mentioned in several witness statements and emailed by the claimant, he was not interviewed as part of this process. As we have previously noted, this supports our finding that the version of the investigation report sent to the claimant omitted Mr Scadeng from the list of witnesses. The claimant made it clear that he had a belief that the flight of 6<sup>th</sup> May 2014 was planned illegally into discretion. He wrote that he had asked four months ago in an email to the Chief Pilot and in his voyage report for the company to provide information regarding the planning of the duty of 6<sup>th</sup> May to confirm that he was wrong and he was still waiting for a response. He asserted that it was only when the company reneged on the fact that another crew would be found to take the flight onwards (what was “planned to happen”) and informed him that another crew was not available (what “actually happened”) that he was able to legally utilise Captain’s discretion. The claimant included in the pack details of the events relating to the flight to Goa in 2011, including that the claimant understood that the CAA representatives had advised Mr Thorington of his incorrect interpretation in relation to the exercise of discretion.

78. The disciplinary hearing took place on 6<sup>th</sup> October 2014 and was conducted by Roger Scadeng. The claimant was accompanied by his BALPA representative David Margrie. Ian White attended as a witness for the claimant. There is no agreed set of minutes. The respondent did not send the claimant minutes from the disciplinary hearing until December. The claimant provided amended minutes on 23<sup>rd</sup> February. The amendments were not based on any notes made by the claimant or his representative at the time but on his and his representative’s recall. Both versions of the notes are consistent on the following points. The claimant suspected that the flight was rostered illegally and this belief was confirmed in the flight plan which came out which showed it was twenty minutes over. The claimant informed the respondent on 5<sup>th</sup> May that he was not prepared to go into discretion the next day. There were two reasons for this: his early SIMS and the fact that he suspected the flight was illegally rostered. On 6<sup>th</sup> May, on the flight, the claimant informed the respondent that he was running late and was not going to use discretion. The claimant was asked “so are you fit to continue but elected not to”. The claimant replied “because it would have been illegal to do so. The flight as I worked it out was twenty minutes into discretion and that was confirmed by the flight plan I received. Even at max speed for Boeing it’s still over”. The claimant expressed the view that the flight was planned to go into discretion so, before he left Manchester, he could not agree to go into discretion and he told the respondent, when he left Manchester, that he could not exercise discretion legally. He asserted that it was agreed that the aircraft would be met by another crew if they could not make up time; if they could not land legally at Manchester the plan was to divert. He called up and asked where to divert to and was told they did not have the crew. He said he had to reconsider. Legally, this was not as planned, so he could use discretion. The claimant said “this is the crux of it that has not been looked at. There were reasons when I started that I was not able to use discretion”. The claimant confirmed that he was not, at any point, too tired on 6<sup>th</sup> May to operate discretion. He asserted that the Commander’s decision was totally at his discretion.