

79. The claimant was asked about saying, at the time that he said he would exercise discretion, that he would not be available on 7<sup>th</sup>. The claimant said he suspected that he would be fatigued/not fit to fly the full duty on 7<sup>th</sup> May and gave the company notice of this. The claimant quoted the Air Navigation Order 146: "A person must not act as a member of the crew of an aircraft to which this article applies if they know or suspect that they are suffering from or having regard to the circumstances of the flight to be undertaken are likely to suffer from such fatigue as may endanger the safety of the aircraft or of its occupants". The claimant said he suspected fatigue "based on that and the prior duties and stress at home and one hour twenty five over minimum rest and three hour road traffic. I was confident in my suspicion that I would not be fit the next day". The claimant was asked "you can be fit enough to operate beyond max FDP yet at the same time sufficiently fatigued not to operate beyond minimum rest. How is that possible?" The claimant referred to the FRMS print out. He said, on 6<sup>th</sup> May, the working day was going to be eighteen hours from waking up to getting home and the duty was over the maximum FDP. The only reason he continued was the competency and duties of the First Officer. The claimant said that it was three hours from off duty to home. Because of early flights, he was pretty sure he would not be able to sleep through. He was right; he did not get a full night's sleep. The claimant said "my view was at that point I was fit but I suspected I would not be fit for the next duty".

80. It was put to the claimant that he did not tell Operations that he suspected he would not be able to operate the next duty but said he would not be able to operate it. The claimant replied that Mr Scadeng would be aware of the HF static. The conversation was that he would talk to crewing when he landed. He said he told Operations "you better tell crewing I'm not going to be available tomorrow". The claimant said he suspected on 6<sup>th</sup> that he would be fatigued on the next day. The respondent's version of the minutes then record the claimant as saying "I had a very real concern I was experiencing the onset of fatigue, prejudicial to safety". In the claimant's version of the minutes, he precedes this by "on the 7<sup>th</sup>". Notes are consistent in recording the claimant as saying that, if he had operated on 7<sup>th</sup> May, it would have been in flagrant disregard of the ANO Cap 371 "Dangerous and Illegal".

81. The claimant said he brought to the respondent's attention by reasonable means, i.e. an email to Roger Scadeng and a fatigue report, circumstances which he thought would be harmful or potentially harmful to the health and safety of himself, the crew and passengers. The claimant alleged that, highlighting the danger by email to Roger Scadeng and completing fatigue reports and refusing the 7<sup>th</sup> May duty on safety grounds, he had been suspended for over five months. The claimant's representative confirmed that the claimant believed he was suspended and facing a disciplinary because he had raised a safety issue. His representative said they were asking Mr Scadeng to consider the safety issue as raised as mitigation and defence. Mr Scadeng commented "a fundamental point is if you were not too tired to exercise discretion yet genuinely believed you would be too fatigued to operate the next day that's hard to put together". The claimant referred to the print out which showed the trace of 7<sup>th</sup> was just above the red. Mr Scadeng asked "at the point you informed the company you would be operating in discretion did you mention fatigue?" The claimant said he did not because he had agreed he would call crewing when he landed. Both sets of notes confirm that Mr Scadeng asked a question "so when did you confirm that you would not be fit due to onset of fatigue". The respondent's