

“However at the same time that you informed the Company that you would now exercise discretion and continue with your planned flight to Manchester, you said that you would not be available for your duty the next day. You stated during the meeting that you *“had very real concern I was experiencing the onset of fatigue prejudicial to safety”*. Your testimony is that this concern was experienced at the very same time that you assessed yourself as not too tired and able to continue safely to Manchester beyond normal maximum flight duty limits. Your exercise of discretion on 6th May is entirely inconsistent with you subsequently saying you had concerns during that flight about the onset of fatigue and gives me a reasonable belief that there is doubt as its veracity. On the balance of probabilities I believe that as you first raised fatigue only some hours later, on being asked to call the Company after landing, that you were dishonest in asserting that the reason for refusing the duty of 7th May 2014 was the onset of fatigue on 6th.

“This raises very serious concerns regarding integrity, and the trust and confidence that the Company must have in its Commanders. With this in mind I find that the appropriate sanction would be dismissal; however, due to the mitigation arguments put forward on your behalf by your BALPA representative and your length of service, I have exceptionally decided to reduce the sanction to a final written warning to remain current for a period of two years”.

92. Mr Scadeng advised the claimant of his right of appeal.

93. In evidence to this Tribunal, Mr Scadeng confirmed that he had concluded that both allegations were well founded.

94. In relation to the first allegation, about the exercise of discretion, Mr Scadeng confirmed that he understood that refusal to comply with a reasonable management instruction was part of that allegation. Mr Scadeng said the reasonable management instruction was the roster. Mr Scadeng said his belief was that the claimant saying he would refuse to operate discretion was a protest at the series of duties he had received. Mr Scadeng said, by the claimant's actions, this appeared to be pre-determined: the claimant made reference to a lack of available crew; he appeared annoyed at the company for not having the crew to replace or additional crew on flight. Mr Scadeng said it was his belief that it was a means of punishing the company with a view to being removed from that duty and being replaced by someone else. The view was supported by the fact that, notwithstanding that, prior to commencing duty, he said he could not offer discretion, he did commence the duty. On 5th May he gave notice that he would not use discretion on 6th. On 6th he said he would not exercise discretion, although he would not know his level of fitness. Most significantly, in the final forty minutes, the claimant was still saying he could not exercise discretion and the company should make provision for contingencies yet, a little while later, where nothing had changed between the two calls, the claimant, said he could now use discretion. This was inconsistent with his previous position. He was still on the same duties. At the point when he ultimately acknowledged that discretion could be used, he stated he would not be available for duty the following day.