

the 7th, we would not be here. Had you just phoned on 7th, we would not be here now". Mr Scadeng said he thought it unlikely that anyone would become fatigued by flying an extra ten minutes.

102. The claimant appealed Mr Scadeng's decision and set out his grounds in an email dated 3rd November 2014. He wrote that he had declined his duty on 7th May because he was experiencing the onset of fatigue and his decision was in accordance with his obligation in the Air Navigation Order. The claimant asserted that the respondent's claim that he was not fatigued was false. He wrote "the decision to make an award of a final warning is, I contend, erroneous given the evidence which was presented at the hearing by way of oral submissions and the written documentation. I also believed that I have suffered a detriment by this award as a result of me raising a safety related issue".

103. An appeal hearing was heard on 19th February 2015 by Paul Hutchings, Group Director of Flight Operations for the respondent. The claimant was accompanied by his BALPA representative, David Margri. An audio recording was made of the appeal hearing and we have a transcript of that in the bundle.

104. It is apparent from the transcript that Mr Hutchings spent a substantial part of the appeal hearing trying to explore relationship issues between the claimant and the others involved in the disciplinary process. Little time was spent on exploring the substance of the allegations themselves. We find that the appeal hearing could not properly be described as a rehearing.

105. Mr Hutchings wrote to the claimant with the outcome of the appeal on 11th March 2015. He wrote that there was insufficient evidence for him to overturn or amend the decision of the disciplinary manager. Mr Hutchings wrote that he did not agree with the claimant that the flight duty on 6th May 2015 was rostered illegally. Mr Hutchings wrote that the event showed a lack of understanding in rules relating to discretion on the claimant's part and also lack of reasonable co-operation that would have been expected of him. He wrote: "the evidence suggests you were deliberately trying to cause disruption by stating that you were not going into discretion prior to the flight and when this became a necessity in order for you to get back to Manchester you pre-determined your availability for the following day in what appeared to be an alternative way to punish the Company. The publication of this roster can be described as a reasonable management instruction as the flight was planned within legal limits, and you made no obvious attempt to follow that instruction and co-operate with the Company". He wrote "There would be no problem at all with you having disputed the flight on 6th May being achievable within the maximum FDP or you having said you would be too tired to fly on 7th May if it was thought you had reasonably believed either of those things to be true. It is the manner in which you sought to avoid your duty on 6th and 7th May that led to the belief that you not wanting to work the work pattern you had rostered was the true reason". He wrote "you sought to avoid the duties that had been planned for you and were dishonest about your motivation for not wanting to perform those duties". Mr Hutchings wrote that, had fatigue been the real reason for refusing the duty on 7th May, then he believed the claimant would have mentioned this at the time he said he would not operate the flight.