

106. We heard no evidence as to whether the respondent has a health and safety committee. We would be surprised, given the size of the organisation, if it did not.

Submissions

107. Both parties had produced skeleton arguments at the start of the hearing. Mr Crossfill referred to his skeleton argument during the course of his closing oral submissions. The claimant made oral closing submissions. He appeared, in large part, to be reading from a document on his laptop. The claimant subsequently sent to the Tribunal what he said was a transcript of his arguments he did at the time. The Tribunal has relied on its notes of his oral arguments.

Respondent's Submissions

108. Mr Crossfill said there was no dispute that the claimant suffered a detriment. The Tribunal did not need to decide about the fairness of procedure. In relation to the issue whether the claimant was subjected to detriment on the ground that he made protected disclosures, Mr Crossfill said the employer could have subjected the claimant to detriment for whatever reason they chose, provided this was not a prohibited one. They could have botched the process and had no reasonable grounds for their belief and this would be irrelevant other than to the extent it informed the question whether the respondent had an honest belief in the claimant's misconduct.

109. It was not conceded by the respondent that everything the claimant said was a protected disclosure qualifies as a protected disclosure. The respondent put the claimant to proof/took issue with whether the claimant had reasonable grounds for believing some of the things he said were true. It was common ground that it is a criminal offence to fly if a pilot thinks he is too fatigued to fly and an employee has an obligation to carry out his duties with reasonable care and serve his employer with loyalty and good faith. An employer can expect an employee to do his job properly and honestly. The claimant was asked whether his case was that he could exercise his discretion capriciously and the respondent had no right to discipline him. The claimant said yes, discretion was in his gift. Mr Crossfill submitted it was wrong to suggest that discretion could be exercised in bad faith and the employer could do nothing about it. An employer was entitled to expect an employee to carry out his duties honestly and in good faith. This was not the same as being able to require a Captain to exercise his discretion. In relation to fatigue, if a Pilot says they are fatigued, the respondent will not require them to fly the aircraft. A Pilot must decide honestly whether they are fit to fly and not tell lies about it. It is wrong to suggest that an employee who tells lies about it cannot be disciplined. If an employee does not exercise his discretion and says that he is fatigued dishonestly, this is a breach of contract and the respondent can take legal action.

110. Mr Crossfill referred to *Cavendish, Monroe Professional Risks Management Limited -v- Geduld 2010 IRLR 38 EAT* for the proposition that a disclosure of information is required. There is a distinction between a disclosure of information and making an allegation. Mr Crossfill accepted that an employee who says "I am so tired it is unsafe to work" is disclosing information. This is contrasted with the bare assertion that the flight plan is illegal, which is an allegation. Mr Crossfill said there