

requirements. It requires that operators establish flight and duty time limitation and rest schemes for crew members. Paragraph 2.2 provides that operators shall ensure that, for all their flights, "flights are planned to be completed within the allowable flying duty period taking into account the time necessary for pre-flight duties, flight and the turnaround times". The EU Regulation is brought into domestic law by the Air Navigation Order. This requires operators to come up with a scheme aimed at regulating flight times which has to be approved by the Civil Aviation Authority (CAA). The CAA publishes a model scheme. The respondent's scheme is incorporated into its operations manuals. The Flight Duty Period (FDP) is defined in the manual as follows "a duty period that contains a sector in which a crew member operates. It starts when a crew member reports for any duty and finishes at "on chocks" at the completion of the final sector". The manual sets out maximum FDP which varies according to a number of factors including report time. It is common ground that the maximum FDP for the claimant on 6th May 2014 was 12 hours 30 minutes.

10. It is common ground that the claimant was under an obligation not to fly if he knew or suspected that he was suffering from fatigue such that this could endanger the safety of the aircraft or its occupants and that he would commit a criminal offence if he did not comply with this obligation.

11. It is common ground that the claimant had no prior disciplinary record. The claimant's unchallenged evidence is that he had never, prior to 6th May 2014, refused to exercise his discretion. In certain circumstances, a Commander of an Aircraft can exercise discretion to fly up to three hours beyond the maximum FDP. There is a dispute between the parties as to when that discretion can properly be exercised. The claimant argues that the discretion can be exercised only where unforeseen events occur after the flight plan has been produced, which includes the plan given to the pilot on the day of the flight. The claimant argues that both the plan made prior to the day and that issued on the day must comply with the maximum FDP. The respondent argues that it is only the plan produced prior to the day, which appears on the pilot's roster, that must comply with the maximum FDP. The respondent argues that, if there are different circumstances on the day from those assumed in the planning process prior to the day, the maximum permitted FDP could be exceeded by exercise of the Commander's discretion. The respondent says it would be lawful in these circumstances for the Commander to exercise discretion, even before the flight starts, to exceed the maximum FDP. Whilst this difference in view lies at the heart of this case, the Tribunal does not consider it necessary to determine whether the view argued for by the claimant or that taken by the respondent is a correct interpretation of the relevant regulations and guidance. The Tribunal finds that the claimant genuinely believed, and continues to believe, in the view which he advances.

12. In 2011, the claimant was rostered to fly to Goa, returning a few days later. Due to the length of the return sector, there was a requirement for three flight crew in order for the flight to be operated within the maximum FDP. Shortly before the outward journey, the third crew member called in sick. The respondent told the claimant they had no one available to replace the third pilot. The claimant suggested that, as they did not require the third crew member until a few days later, it might be possible to position a third crew member out to Goa by the time of the return journey.