

definitely not exercise discretion. The claimant was clearly laying down a marker and Mr Scadeng and Mr Hutchings thought so. On 6th May, the claimant announced that it was illegal and he was not going to exercise his discretion. Mr Crossfill questioned why, if that was at the forefront of his mind, he did not raise it with more senior people who could do something. But for events in Antalya, the flight would have made it back in time. The claimant said he would divert; he was informed that, if he did so, there would be no one to meet him. The claimant's argument was that now there was something unplanned. Mr Scadeng and Mr Hutchings thought this artificial and contrived; there was never a plan to fly to Gatwick. The claimant said he would not fly the next day. It was remarkable it was able to say with confidence that he would not be able to fly mid day the next day. This was something a decision maker could question. When he got back, he said he was too tired. This was the first time he raised fatigue.

115. Disciplining somebody about being dishonest about their reasons for not coming to work is distinct from disciplining them for not coming to work. Did a decision maker honestly believe this? Mr Crossfill said, if there was nothing on which to form the belief, the Tribunal could be sceptical, but there was what happened on 5th May onwards. The decision makers concluded that things did not stack up: the claimant lied and did not turn up to work. The reason the claimant was disciplined had nothing to do with the fact he drew attention to the flight times; they are the background, not the reason. The decision makers thought the claimant told lies: there was a distinction between what was said and what the claimant did.

Claimant's submissions

116. The claimant referred to the respondent's fatigue modelling programme and submitted that his effectiveness on 7th May was predicted to go to 70, the equivalent of around four times the legal limit for drinking for flying. This was equivalent to the loss of an entire night's sleep. The claimant submitted that he declined duty on 7th May because of the onset of fatigue and he suspected he would be too tired to fly. The claimant said he did not understand Mr Scadeng's rationale for saying that the claimant could not say that he was not fit for the next day.

117. The investigation and subsequent appeal were based on the foregone conclusion of his guilt. He was the last to be interviewed. The fatigue report was not requested until 17th June. The investigation was not a thorough investigation.

118. The claimant referred to the events in the run of duties. He said he was concerned that the roster was exactly twelve hour thirty minutes. He attempted to be as pro-active and helpful as he could be. He rang up the company wanting to inform them of his concerns and suspected the duty could not be completed as it was planned. He was not saying he would not do the rostered duty. He came up with suggestions which were dismissed. The claimant said that he would say that was being professional, unfortunately the respondents saw him as awkward. On 6th May, for the first time in his career, the plans were in breach of maximum FDP. His understanding was that they could not legally proceed, knowing, before they left base that they would have to go into discretion. He could not remember who came up with the idea to divert to Gatwick; he agreed and the inference was that he would meet two crew at Gatwick. On the high frequency radio he was told that no crew