

were available if he diverted. He came to the conclusion they could continue. He said, approximately, you had better tell Crewing I won't be available tomorrow. He said he would explain the reasons when he landed. The claimant submitted that the ramifications of a wrong decision for flight safety could not be under-estimated.

The Law

119. Section 47B(1) Employment Rights Act 1996 (ERA) provides: "A worker has the right not to be subjected to any detriment by any act, or any deliberate failure to act, by his employer done on the ground that the worker has made a protected disclosure."

120. What constitutes a protected disclosure is defined by sections 43A to 43H ERA. Section 43A provides: "In this Act a "protected disclosure" means a qualifying disclosure (as defined by section 43B) which is made by a worker in accordance with any of sections 43C to 43H."

121. The relevant parts of section 43B for this case are as follows:

"(1) In this Part a "qualifying disclosure" means any disclosure of information which, in the reasonable belief of the worker making the disclosure, is made in the public interest and tends to show one or more of the following –

(a) that a criminal offence has been committed, is being committed or is likely to be committed,

(b) that a person has failed, is failing or is likely to fail to comply with any legal obligation to which he is subject,

.....

(d) that the health or safety of any individual has been, is being or is likely to be endangered,....."

122. It is agreed in this case that the disclosure was made to the claimant's employer, so section 43C is relevant. In relation to disclosures made on or after 25 June 2013, the requirement that the disclosure be made in good faith has been removed.

123. The relevant parts of section 44 ERA for this case are:

"(1) An employee has the right not to be subjected to any detriment by any act, or any deliberate failure to act, by his employer done on the ground that –

.....

(c) being an employee at a place where –

(i) there was no such representative or safety committee, or

(ii) there was such a representative or safety committee but it was not reasonably practicable for the employee to raise the matter by those means,

he brought to his employer's attention by reasonable means, circumstances connected with his work which he reasonably believed were harmful or potentially harmful to health or safety,