

## Conclusions

*Did the claimant make protected disclosures?*

130. The claimant provided an extensive list of matters relied upon as protected disclosures. We do not consider it necessary to examine every alleged disclosure to decide whether it meets the statutory requirements for protected disclosures. No argument has been made by the respondent that the respondent may have been motivated to take disciplinary action and issue a final written warning because of an alleged disclosure which did not meet the statutory test but not because of another alleged disclosure which did meet the statutory test. We consider it sufficient for our decision making process if we conclude, as we do, that the claimant made some protected disclosures.

131. The protected disclosures that we conclude that the claimant made fall into two categories. The first is a disclosure that the flight on 6 May was planned for flying time over the maximum FDP and that to exercise his commander's discretion in those circumstances would be illegal. The second is a disclosure that the claimant was or suspected he was too fatigued to fly on 7 May and to fly in those circumstances would involve the claimant committing a criminal offence.

132. The claimant made disclosures to these effects on a number of occasions prior to the decision to start disciplinary action against him to a number of different employees of the respondent, as set out in our findings of fact.

133. In relation to the first category of disclosure, one of the disclosures was to Mr Lamb on the morning of 6 May 2014. The claimant told Mr Lamb that the flight was going to take longer than the maximum flight duty period and he could not use his discretion because it was planned illegally. Another was in an e-mail to Roger Scadeng dated 7 May 2014. The claimant disclosed information about the length of the flight plan and that it was planned into discretion and wrote that, as it was planned to go into discretion, exercise of his captain's discretion would not be an option. We have found that the claimant genuinely believed in the view he advanced. We conclude that he had reasonable grounds for that belief, having regard to the previous Goa incident and the view expressed by the CAA on that occasion. The information disclosed tended to show, in the claimant's reasonable belief, that the respondent was in breach of a legal obligation in relation to the planning of the flight into discretion.

134. In relation to the second category of disclosure, one example is the conversation with Mr Thorington on the evening of 6 May. The claimant disclosed information that he had formed the view that he would be too tired to fly his assigned duty the next day. He made further disclosures in this category, including when he phoned in the morning to say he would not be available for duty due to fatigue and when he completed a fatigue report. We conclude that the claimant was disclosing information that he was, or suspected he would be, too fatigued to fly. We conclude that the claimant had reasonable grounds for this belief, based on the tiring run of duties and, as at 6 May, suspected poor sleep on the night of 6/7 May, and, on 7 May, actual poor sleep experienced in the preceding night. We conclude that the