

information disclosed, in the claimant's reasonable belief, tended to show that he would commit a criminal offence if he flew a plane whilst fatigued.

135. We conclude that both categories of disclosure were clearly, in the reasonable belief of the claimant, made in the public interest. Rules about maximum FDP and not flying whilst fatigued are made with the safety of crew and passengers in mind. If they are not complied with, there is an obvious increased risk to those flying.

136. We conclude, for these reasons, that the claimant made protected disclosures in the two categories we have identified.

Detriment

137. There is no dispute that the claimant was subjected to detriment by the respondent in that he was subjected to disciplinary proceedings and given a final written warning.

Causation

138. The remaining issue in relation to the complaint of detriment on the ground of making protected disclosures is causation; were the disclosures the real reason for the respondent taking disciplinary proceedings and giving the claimant a final written warning? The employer's reason or motive may be conscious or unconscious.

139. Mr Crosfill is entirely correct in submitting that 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.

140. Mr Crosfill correctly pointed out that the claimant did not put to Mr Scadeng that he had been motivated by the protected disclosures. Given that the claimant was unrepresented, there is limited weight that we would feel able to put on this omission to put this aspect of his case to Mr Scadeng. In any event, even if it cast any light on Mr Scadeng's conscious motivation, it would not cast any light on his unconscious motivation.

141. In accordance with s.48(2) ERA, it is for the employer to show the ground on which any act, or deliberate failure to act, was done. Has the respondent satisfied us that the protected disclosures had no material influence on its decisions?

142. The disciplinary making process starts with the decision to suspend the claimant and investigate disciplinary allegations against the claimant. The decision to proceed to a disciplinary hearing and the formulation of the charges follows. The process culminates in the decision of Mr Scadeng, after conducting the disciplinary hearing, to find the claimant guilty of gross misconduct and issue him with a final written warning and the decision of Mr Hutchings to uphold this decision on appeal.