

seek a copy of the fatigue report until after the investigatory interview with the claimant.

147. The crucial e-mail from Mr Thorington to Mr Scadeng of 8 or 9 May, which appears to have been the trigger for turning this into a disciplinary matter, is not produced in the bundle in what would be its normal format, with a header showing the sender, recipient and date and time sent, but with the header omitted and no reference to the recipient. Neither did the index refer to the recipient. The respondent provided no explanation for this. At worst, the presentation of the document in this way could indicate an attempt to conceal from the claimant and/or the tribunal that this information had been given to Mr Scadeng on 8 or 9 May and, therefore, the level of Mr Scadeng's involvement prior to his conduct of the disciplinary hearing.

148. The copy of the investigation report sent to the claimant omitted mention of Mr Scadeng as a witness. The respondent provided no explanation as to why this was the case. At worst, this could have been an attempt to conceal from the claimant the level of Mr Scadeng's involvement in the matter prior to his conduct of the disciplinary hearing.

149. The format of the document setting out the evidence Mr Scadeng gave to the investigation is also misleading, suggesting an interview in person, rather than the exchange of e-mails we are told took place. We would have expected to see the exchange of e-mails in the bundle. They were not there.

150. At the stage of inviting the claimant to a disciplinary hearing, a second allegation was added which the claimant had not had an opportunity to address at the investigatory stage. We had no explanation from the respondent as to why this was done.

151. The claimant was assured that the disciplinary hearing would be conducted by someone with no prior involvement in the matter. Instead, Mr Scadeng was appointed as the disciplinary officer. Ms Burke gave evidence that Mr Scadeng was asked to deal with the matter because Mr Cheam was on leave. The tribunal did not consider the explanation satisfactory. If there really was no one else with no prior involvement who could have dealt with the matter, there was the possibility of waiting until Mr Cheam returned from leave. Indeed, the disciplinary hearing did not take place until October, by which time, presumably, Mr Cheam would have been available. However, Mr Scadeng, with advice from HR, decided he should continue to deal with the disciplinary proceedings. We do not consider that Mr Scadeng was likely to be able to approach the matter without preconceived views arising from his discussions with Mr Thorington on 6 and 7 May and from the e-mail addressed to him, sent 8 or 9 May. As set out below, we do not consider that there were reasonable grounds for reaching the conclusions which Mr Scadeng says he reached. We consider that an independent person would have found it difficult, on the evidence, to reach the conclusion, for example, that the claimant was lying about being fatigued. This would be an easier conclusion for someone with preconceived ideas to reach. It is possible that the choice of disciplinary officer was affected by a desire to reach a particular outcome. The wording used by Mr Scadeng in his witness statement of "extracting a concession" from Ian White does not suggest someone who entered into the process with an open mind.