

*Health and safety – s.44 ERA*

159. The claimant relied on s.44(1)(c), (d) and (e).

160. For subsection (c) to apply, the claimant must have been an employee at a place where either there was no such representative or safety committee, or there was such a representative or safety committee but it was not reasonably practicable for the employee to raise the matter by those means.

161. We heard no evidence as to whether there was a health and safety committee, although we would be surprised if there were not in such an organisation. The burden is on the claimant to satisfy us that this part of the test is made out. The claimant has not satisfied us that there was no health and safety committee. However, we are satisfied that, even if there was, it was not reasonably practicable in the circumstances for the claimant to raise the matters of the flight time and fatigue with the committee given the time constraints. On the morning of 6 May, there was limited time available if the plane was to take off on time. Although the claimant continued to raise the issue later, when he could have also taken it up with a safety committee, he began raising it in circumstances where it was not reasonably practicable to take it up with the committee. Similarly, he started raising the issue of fatigue in the evening of 6 May and then the morning of 7 May, being due to report for duty around lunchtime on 7 May. In these circumstances, it was not reasonably practicable for him to raise the matter with a committee at the time he started raising it.

162. The claimant has satisfied us that, by raising the flight time issue and the fatigue issue, 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. The limits on flight time and not flying when fatigued are clearly matters related to safety which, if breached, are potentially harmful to the health and safety of passengers and crew.

163. For subsection (d) to apply, the claimant must first satisfy us that there were circumstances of danger which he reasonably believed to be serious and imminent and which he could not reasonably have been expected to avert. The claimant has satisfied the tribunal that these circumstances existed were he to fly whilst fatigued. Whilst the flight time issue relates to safety, the tribunal is not satisfied that the circumstances surrounding the flight time issue were of serious and imminent danger.

164. The claimant must also satisfy us that, in those circumstances, he left (or proposed to leave) or (while the danger persisted) refused to return to his place of work or any dangerous part of his place of work. In relation to the fatigue issue, the claimant was refusing to work due to fatigue, so the tribunal considers this part of the test to be satisfied.

165. For subsection (e) to apply, the claimant must satisfy us that, in circumstances of danger which the employee reasonably believed to be serious and imminent, he took (or proposed to take) appropriate steps to protect himself or other persons from the danger. For the same reasons as in relation to subsection (d), the