

He was told this was not possible. The claimant informed the company that, as he understood it, he could not knowingly go into discretion in a few days time, knowing before the report time for the return journey that the flight would operate over the maximum FDP. Mr Andy Thorington, who was Duty Pilot that day, contacted the claimant and informed him that he was incorrect in his understanding and that he could legally operate the flight back to the UK in the full knowledge, before the report time for that return flight, that, in order to get the aircraft back, he would be required to exercise discretion. Mr Thorington confirmed this view in a fax to the claimant. Relying on this assurance, the claimant flew back to Goa with a two person crew. The claimant sought advice, on his return, from another pilot who contacted the CAA. The CAA informed this person that the claimant's interpretation of the rules had been correct and Mr Thorington's was incorrect. Mr Thorington was informed of this view which was to his surprise as it conflicted with advice he had previously been given. We accept that Mr Thorington also subsequently had advice from the CAA which supported his own interpretation of the rules.

13. We find that the claimant was confirmed in his original understanding of the rules by the Goa incident. We find that he genuinely held a view that he could not legally exercise discretion if the event which would lead to the maximum FDP to be exceeded was something known to the operator by the time the flight plan given to the Commander on the day of the flight was produced.

14. We find that it was very unusual to have a flight plan on the day which indicated that the duty would not be completed within the maximum FDP. Captain Elliott, a very experienced pilot and trainer, had never come across this situation. He said he would have to take advice if this occurred.

15. In the period 2nd to 7th May 2014, the claimant was rostered for a series of duties which the parties agreed would be demanding duties. The claimant had flight duty on 2nd May followed by two early starts for duty in the simulator. The roster showed him with a flight duty period for 6th May 2014 of twelve hours thirty minutes, the maximum FDP allowed. He was scheduled for a further flight on 7th May with a reporting time around lunchtime.

16. The flight duty on 6th May 2014 was a non-standard, three leg route. Such routes were devised at the start and end of seasons (the shoulder season) when there were unlikely to be full planes of passengers on both outward and return journeys from a particular destination. The flight pattern had been scheduled to avoid planes returning empty. The plane was to fly first to Heraklion, then to Antalya and back to Manchester. The plane would be delivering passengers and baggage to Heraklion but not taking on passengers and baggage for the flight to Antalya. At Antalya the plane would take on passengers and baggage before flying back to Manchester.

17. On 5th May 2014, after his return from the simulated test, the claimant rang Joe Cavanagh in the respondent's crewing department in relation to his flight duty period for the next day. The flight duty period was for the maximum time allowable of twelve hours 30 minutes. Based on his experience of flying parts of the route, the claimant doubted that the planned flights could be completed within the maximum flight duty period. The claimant told Mr Cavanagh of his doubt that the flights could