

be completed in the allotted time. The claimant told Joe Cavanagh that he would not exercise his discretion the following day. The claimant made suggestions to avoid the possibility of him going over maximum flight duty period. He suggested the respondent put a third pilot on the jump seat to increase the available FDP but was told this was not possible. He suggested a duty swap with another captain and that he was given a flight that would not be as conducive to fatigue. He was told this was not possible. The claimant expressed the view that the roster had been manipulated in order to make it appear that the FDP would be legal. The claimant said he would not be prepared to use his discretion to cover any failure to roster the flight within the maximum allowable FDP as this would be an inappropriate use of command discretion. He also said that he thought it was a potentially fatiguing inducing roster.

18. The claimant was due to start his duty on 6th May 2014 at 7.00 hours GMT. He arrived at the Manchester crew room at approximately 6.50 GMT. He was given the flight plans (PLOG) that had been produced at 6.01 GMT. If the maximum FDP was not to be exceeded, the claimant should have arrived back at Manchester Airport no later than 19.30 GMT. The PLOG showed an estimated arrival time of 19.53 i.e. 23 minutes over the maximum FDP. We find that the claimant suspected that the duty for 6th May had been manipulated prior to that date to fit the maximum FDP of 12 hours 30 minutes. We also find that the claimant held the genuine view, supported by the history of the Goa incident and the view expressed by the CAA following that incident, that the plan produced on 6th May had to comply with the maximum FDP. We find he genuinely held the view that, as Commander, he could not properly exercise discretion to exceed the FDP where the circumstances which would lead the FDP to be exceeded were known at the time the PLOG was produced.

19. The claimant spoke to Martin Lamb, the Crew Controller in the Crewing Department, at around 7.00 GMT, around an hour before the flight was due to depart. 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. Mr Lamb took the view that the flight duty had been planned legally. The claimant asked where he should divert the flight to. Mr Lamb said that he would speak to the Operations Department.

20. Mr Lamb reported his conversation to Gareth Harvey, who was employed as Operations Duty Manager at the time. Mr Harvey no longer works for the company. Gareth Harvey arranged for the flight schedule to be reviewed and noted that, flying at standard speeds, the flight would take 15 to 20 minutes longer than planned due to the head winds and weather conditions on the day. Peter Lloyd re-did the plan for the first leg of the flight at high speed to reduce the flying time. A new PLOG was produced at 7.15 GMT which reduced the flying time for the first leg of the journey by 13 minutes. The PLOG was not amended for the second and third legs of the journey so the estimated arrival time back on chocks at Manchester Airport remained 19.53. This was the last PLOG produced and given to the claimant before take off. The claimant was not given a PLOG which showed a return to Manchester within the maximum FDP. However, we accept that the respondent considered it possible that, by measures such as increasing flight speed on the other legs and reducing turnaround times, the plane would arrive back at Manchester Airport within the maximum FDP.