

told him to go home and rest and, if he felt he was not fit for duty the next day, to phone in to say this.

25. The next morning, the claimant phoned at 8.30 to say that he would not be available for duty that day due to fatigue and that he would complete a fatigue form. He also said he would email the chief pilot with the details of the previous day's duty. The claimant says he did not sleep well, waking early, as he had feared he might after the series of early morning awakenings he had had on that duty roster. Whether the claimant was genuinely fatigued and was genuine in reporting that he was not available for duty due to fatigue was an issue in the disciplinary proceedings. We accept the claimant's evidence that he suspected on the evening of 6 May that, due to his previous run of duties, he was likely to sleep badly and wake early and that, on night of 6/7 May, this suspicion proved to be well founded.

26. The claimant completed a voyage report no later than 9.40 am on 7th May. In the Captain's report, he wrote the following:

"I informed the company the day before this flight that the rostered flight duty was EXACTLY the same as the maximum FDP (if the flight had a report of 1 min earlier then the duty would have been over the max FDP by 1 hr). Upon arrival at the crew room and having checked the plogs provided using planned speeds the times clearly showed that the duty would result in discretion. When this was pointed out the company then produced plogs for high speed crews (Mach.82). Even at this high speed it still showed that the duty would operate into discretion. Can the company please confirm to me how exactly the timings were used to produce this duty time of 12.30 as it is clear, that even using non-standard high speed cruise that this duty was always going to result, as I had predicted, of going into discretion. I informed the company at the start of the day that discretion would not be available due to my previous duties. Furthermore, discretion as per 7.18.1 states "The extension shall be calculated according to what actually happens not on what was planned to happen". It appears this duty was planned to happen. I informed the company therefore discretion would not be an option and was told that if it looked like the duty would run into discretion then another crew would be called out to take the aircraft onwards from which ever airfield we landed at (LGW was discussed). On the return flight when, even with direct routings and flying at Mach.82 it was crystal clear we would be into discretion at arrival at Manchester. Upon calling the company it became clear that despite the company's previous assurance that another crew would be available to take the aircraft onwards I was informed that now "there were no crew available" to take the flight onwards. Due to the fact that I could not foresee that "change of tack" by the company i.e. I could not foresee I would be let down and not given the support I had been informed of, after very careful consideration re the first officer's abilities and previous duties I elected to continue into discretion. After arriving at my car and ringing crewing up to inform them of the very strong probability due to today's and my previous duties I would not be available for the next day's duty I was put through to the Duty Pilot (this resulted in extra time spent on duty due to the length of the conversation)."