

27. On 7<sup>th</sup> May 2014, the claimant sent an email to Roger Scadeng, the respondent's Chief Pilot. The claimant asked for Mr Scadeng's input. He expressed the view that "there are some serious issues that need to be attended to regarding the realistic rostering of flights and the "backup that should be afforded to flight crew for the day to day operation of flights". He wrote that, for the first time in his flying career, he had that day rung up crewing to inform them that he would be unable to perform a flight duty due to his very real concern that he was experiencing the onset of fatigue which would erode the flight safety if he completed that day's duty. He wrote that he was in the process of filling in a fatigue form. The claimant wrote:

"Upon reporting yesterday the reality of the situation became apparent. Upon looking at the initial plogs produced at standard crews and turnaround times it became clear that the duty was actually planned into discretion by approximately twenty minutes. I informed the company that I would not be utilising my Captain's discretion as per FTL7.18.1. It states "the extension shall be calculated according to what actually happens not on what was planned to happen." Therefore as it was planned to go into discretion, my Captain's discretion would not be an option. The company then produced high speed cruise plogs (MACH H2) in an attempt to reduce the planned FDP to below that of 12.30. Even then the duty time showed in excess of the maximum of 12.30."

28. The claimant asked what figures had been used to come up with the original FDP of exactly 12.30 which was exactly the maximum FDP available. The claimant wrote: "The only reason I elected to continue with the duty once I had seen the times that were "planned" on the flight plan stage was that I was assured by the company that if I was not able to make up time on turnarounds then another crew would be despatched to continue the flight should I need to divert due to duty hours. As per 7.18.1 I was not legally able to consider discretion because the flight had been planned to go into discretion".

29. The claimant wrote that, on the flight back to Manchester, he was told there was no crew available to fly onto Manchester if he diverted. He wrote that he then had to make a decision based on this new information. He wrote "taking into account the ability of the Senior First Officer and the fact that he had only just started his series of duties, I elected on this occasion to exercise Captain's discretion to get the company out of the massive financial hole that was due entirely to its own making". He wrote "upon landing I was very tired and more to the point extremely disappointed in the company's handling of the matter". He wrote "hopefully you will agree that my series of duties were absolutely not ideal and although legal (I shall leave the FDP of yesterday's fiasco out of that comment for the time being) would have resulted in the operating a flight back this evening at a reduced level of alertness that would have been prejudicial to the level of safety that I would expect". The claimant wrote that he had never, when the flight had been legally rostered, refused to utilise his legal command at discretion for the company's benefit.

30. Mr Scadeng passed the claimant's email of 7<sup>th</sup> May to Jo Smith, a Senior Flight Crew Manager, to deal with. Mr Scadeng said that his main concern was what the claimant said about fatigue. He said he knew that what the claimant said about the flight being planned illegally was not true. Mr Scadeng said that, when a fatigue