



The Cathay Pilots Union

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The Director-General of Civil Aviation
ATTN: Acting Chief of Flight Standards
Mr. CHENG Lam Yuen, Eric
10/F, Commercial Building
Airport Freight Forwarding Centre
2 Chun Wan Road
Lantau
Hong Kong

15th October 2008

By Email Only: elycheng@cad.gov.hk

Dear Mr Cheng

Cathay Pacific Airways Approved Flight Time Limitation Scheme (CPA AFTLS) - Commander's Discretion

Please find attached an Air Safety Report and subsequent correspondence with Cathay Pacific Airways from one of our members regarding Commander's Discretion. CPA management confirmed that this Scheduled Flight Duty was within the provisions of the CPA AFTLS.

We would appreciate your interpretation on whether the Commander was correct to decline the use of Commander's Discretion for Hong Kong based crew on a rostered pattern originating in Hong Kong.

A handwritten signature in black ink, appearing to be "S. Cheng", written in a cursive style.

Yours sincerely

The CPU

Attachment

ASR:

At pre-flight despatch F/O advised that Cdrs Discretion would be necessary due "insufficient base rest". All crew HKG based.

On checking with Crew Control, Captain advised "Need to waive Sleep Opportunity after arrive Rome after CX293 before CX292 on {Wednesday}". It transpired that F/O had arrived from London pattern at 0714 Local that morning, had received Normal Rest instead of Physiological Rest with a Sleep Opportunity before reporting at 2255 Local same day.

Volume 1 AFTLS states that the provisions of AFTLS Para 16.2 can only be waived if the Crew Member were to operate only one further Sector within the Duty Cycle and returns to Home Base within 72-hrs after start of Duty Period that resulted in becoming Unacclimatised and then afforded a Recovery Period which may not be reduced. None of these conditions would be met.

Para 16.3 is a CAD-approved Variation specifically "To return a Crew Member to Base within 72-hrs iaw original roster". The Scheduled Roster of the F/O did not meet this provision.

Furthermore, the original request was to waive the Sleep Opportunity in Rome - which was incorrect.

Moreover, Cdr's Discretion in the AFTLS is limited to Extending an FDP and Reducing Rest. A Commander has no authority to use his Discretion to reduce the Variation requirements. Additionally, the AFTLS prescribes that Discretion cannot be Scheduled - as was the case here - nor can it apply prior to commencement of the Duty Period. In the original request, the Cdr was being asked to exercise Discretion to further reduce a Rest Period (in FCO) when Physiological Rest had already been replaced by Normal Rest under the AFTLS provision of 16.3 - this is prohibited.

The resulting delay and crew change was completely avoidable. The F/O concerned arrived at Flight Despatch with red eyes having been advised that Captains always exercise their Discretion.

There are 9 separate abrogations of the AFTLS in this Scheduled pattern. And therefore they constitute a major deficiency in the procedural operation of the AFT Limitation repeat Limitation System by Crew Control.

Anecdotal evidence puports that AFTLS Para 16.3 provisions are being increasingly used on Home Based crew outwith the Variation intent.

- *AFTLS 8.2.B.a .. termination of the Duty Period and commencement of the Rest Period will be ATA on blocks plus thirty minutes.*

whether he would operate having with this reduced rest subject to the Commander's discretion.

In other words, Commander's Discretion was Scheduled prior to a Duty Period:

- *AFTLS 25.1 "cannot be Scheduled and will only apply once the crew member has commenced a Duty Period."*

He indicated that he would be fit and willing to do so. Although back-to-back ULR rotations are usually only rostered for crew who have specifically indicated a willingness to operate such patterns, they are of course perfectly allowable under the AFTLS.

Subject to the provisions of AFTLS 16.2 and 16.3

During the initial phone conversation between the Captain and the Crew Controller, the Captain was incorrectly informed that the FO needed to waive physiological rest in Rome after the arrival of 293. In fact the rest period provided in Rome satisfied all FTL requirements, including a physiological sleep opportunity, and was not at issue.

Incorrect Crew Control procedure.

Subsequently, after the Crew Control Supervisor became involved, it was clarified that the F/O had not received the full rest requirement in HKG after return from LON in the morning, and that therefore Commander's discretion needed to be applied to reduce the F/O's rest period in HKG, not the rest period yet to be undertaken in Rome.

The report states that 16.3 of the AFTLS could not be used in the circumstances. This is absolutely correct, but irrelevant, since there was no intention of using this provision. 16.3 can of course be used without the need for the Commander to apply discretion. In this case 16.3 was not used; there was never any intent that it would be.

Nonetheless, sub-paragraphs 16.2 and 16.3 are complimentary, with the latter being a CAD-approved Variation in the event that Para 16.2 is not used. Para 16.3 specifies the CAD's minimum requirements should Para 16.2 not be used. It is an "Either/Or" provision.

The Crew Control Supervisor was asking the Commander to waive the requirements of 16.2. Crew Control knew that CAD prohibited the use of 16.3 in these circumstances therefore they were asking the Commander to use a different provision, in effect, to bypass the CAD requirements.

Whilst the Commander has the authority to reduce Rest, he cannot exercise Discretion to bypass the other CAD requirements.

The Captain himself apparently drew the erroneous inference that 16.3 was being applied. There is nothing in what Crew Control said to the Captain to indicate or imply the use of 16.3.

The initial (erroneous) request was for 16.3 to be applied in Rome i.e. "reducing Physiological Rest in Rome". This shows that Crew Control's understanding of the AFTLS is correct: either 16.2 or 16.3 applies.

The Captain was in fact asked whether he was prepared to use his Discretion (under Section 25 of the AFTLS) to reduce the rest period. There is obviously some confusion in the Captain's mind over the distinction between these totally separate and independent provisions of the AFTLS.

None whatsoever. The AFTLS is a carefully crafted integrated document resulting from many hours' discussion in the CAD FTLWG. As a participant in that process, I am completely conversant with all of the minutes of those meetings and their intent.

For example, the Variation 16.3 is currently repeatedly used **outside** CAD's intention of "*To return a Crew Member to Base within 72-hrs iaw original roster*". CAD clearly intended the undefined phrase "*roster disruption*" to apply **only** to the original crew member's roster. GMA and Crew Control now interpret it to mean **any** Unforeseen Circumstances involving **any** Crew Member on any fleet. The definitions of Unforeseen Circumstances and Schedule Disruption were defined precisely to avoid the ambiguity created by the phrase "*roster disruption*".

Because CAD 371 and the AFTLS are carefully integrated documents, with the primary intent "*to avoid fatigue in aircrews*", most of the provisions are mutually dependent e.g. Duty and Rest provisions are separate but entirely interdependent: one stops, the other starts.

Likewise, AFTLS 16.2 and 16.3 are mutually dependent, as are Paras 16 and 25 - Para 16.3 specifically includes the limits on how Commander's Discretion, Para 25, may not be applied.

The Captain states in the ASR that discretion to reduce rest could not be applied in the circumstances because it was prior to the duty period. Clearly the Captain is also confused over the application of Section 25 of the AFTLS.

Incorrect. GMA has already stated above that the F/O was rostered for this pattern *prior* to the Duty Period starting and *prior* to Commander's Discretion being obtained.

In the telephone conversation he states to the crew controller that urgency was required since STD was 1 hour 5 minutes away. Since report time was STD- 1 hour 10 minutes, the FDP had already commenced.

Incorrect. The Crew Control tapes show that the conversations with {name} in Crew Control had already commenced before the Duty Period commenced at 22:55L.

GMA does note, however, that "*the FDP had already commenced*". As AFTLS Para 8 specifies, the FDP and DP commencement time are the same, therefore the Duty Period commenced at 22.55L. Therefore, again, the Commander's Discretion had

been Scheduled prior (at about midday, some 11 hours beforehand) to commencement of the Duty Period - both contrary to AFTLS 25.

It has always been clearly understood that Commander's Discretion cannot be Scheduled for HK-based crew outbound from HK - it can only be used after the start of the outbound Duty Period. It is intended as a contingency fallback mode for (Rest at) outports - not as an originating mode at Home Base.

However, this is moot since Commander's Discretion to reduce a Rest Period can be used in the event of Unforeseen Circumstances, which is defined as circumstances occasioned by operational reasons which occur after the commencement of the Duty Cycle.

Subject to the constraints of AFTLS Para 25:

- They are not intended for use in regular practice, cannot be Scheduled and will only apply once the crew member has commenced a Duty Period.

For the affected crew member, the F/O, the Duty Cycle had commenced when he reported for his flight to London on {Friday}, some three days previously.

Again, incorrect. The F/Os previous Scheduled Duty Cycle was (Table 1):

Wed	Thu	Fri	Sat	Sun	Mon	Tue	Wed
G		255 =====		252 =====	O	O	G

His previous Actual Duty Cycle was (Table 2):

Fri	Sat	Sun
255	252	Previous duty end date
HKG LHR 00:38- 06:13	LHR HKG 12:47-07:14+	

Following Volume 1 procedures, he telephoned Crew Control at the end of the CX252 duty and was given no change of duty. He therefore terminated his Duty Period and commenced his Rest Period at 07:44L.

- A Duty Cycle is "a series of Duty Periods undertaken between DDOs" (AFTLS 7.6).
- A DDO is "a period at Home Base available for leisure and relaxation and free of all Duties. A single DDO will comprise a minimum period of thirty four consecutive hours and will include two Local Nights. Consecutive DDOs will be extensions to a single DDO, will be of at least twenty four hours

duration and will include a further Local Night for each additional consecutive DDO. A Rest Period may be included as part of a DDO.” (AFTLS 7.4A).

An “O” Day meets the needs of a DDO. Consequently, the termination of the CX252 Duty Period and the coincident start of Rest Period is also the start of the DDO.

The relevant Duty Period is the one that commenced on {Friday}.

Incorrect - the Duty Period commencing {Friday} has nothing to do with the proposed CX293 pattern as it was part of the previous Duty Cycle. The “relevant” Duty Period started at 22.55L on {Monday}.

The Captain apparently did not believe that the AFTLS allowed discretion in the circumstances.

Absolutely correct.

Although this is totally incorrect, his decision not to apply discretion was not questioned (Crew Control are under strict instructions not to question decisions regarding the use of Discretion)

It’s an AFTLS requirement (AFTLS 25.3).

and the F/O was removed from the flight and replaced by another F/O who was about to operate to London, having swapped into the London flight for personal reasons. It is unfortunate that inconvenience was caused to this F/O for no good reason. As the Captain notes in the ASR, “the resulting delay and crew change was completely avoidable”.

The F/O who had taken reduced rest was transferred to the LON flight, which was under the Command of a more experienced Check and Training Captain. This Captain, who was fully aware that discretion could be applied in the circumstances, applied such for the F/O to reduce his required rest, and thus a cancellation with resulting major inconvenience to the travelling public was avoided.

Please refer to the AFTLS Objectives at the beginning of this comment - the Scheme has nothing to do with commercial circumstances or social considerations.

Additionally, the F/O arrived for Duty with red eyes having been advised that Commanders “*always exercise Discretion*”. Something is wrong here if Crew Control and F/Os expect Commander’s Discretion to be exercised as a matter of the norm - it implies a “regular practice”, which is again contrary to AFTLS Para 25.

The Company’s duty under the Law (the ANO) is quite clear:

*An operator of an aircraft shall not cause or permit any person to fly therein as a member of its crew if he knows **or has reason to believe that that person is suffering from, or, having regard to the circumstances of the flight to be undertaken, is likely to***

suffer from, such fatigue while he is so flying as may endanger the safety of the aircraft or of its occupants.

Notwithstanding the other abrogations of the AFTLS, it was irresponsible to re-Schedule him for a later and longer flight following one Commander's assessment that it was not proper for the F/O to operate the original flight.

The Crew Control Supervisor - having assumed that Commander's Discretion had been declined once and knowing that the over-riding consideration is safety - must have had "*reason to believe that that person is suffering from or is likely to suffer from fatigue*". In so re-Scheduling him to the LHR flight, CPA was clearly in contravention of the Law.

The report alleges 9 separate abrogations of the AFTLS (although these are not listed specifically so it is not clear exactly what they are),

Sequentially, from my ASR:

1. "provisions of AFTLS Para 16.2 can only be waived if the Crew Member were to operate only one further Sector within the Duty Cycle"
 - rostered for 2 Sectors HKG-FCO-HKG
2. "and returns to Home Base within 72-hrs after start of Duty Period that resulted in becoming Unacclimatised"
 - remained Unacclimatised since arrival at LHR on {Saturday}
3. "and then afforded a Recovery Period which may not be reduced".
 - no Recovery Period, just reduced Rest.
4. "Para 16.3 is a CAD-approved Variation specifically "*To return a Crew Member to Base within 72-hrs iaw original roster*". The Scheduled Roster of the F/O did not meet this provision".
5. "the original request was to waive the Sleep Opportunity in Rome - which was incorrect".
6. "A Commander has no authority to use his Discretion to reduce the Variation requirements".
7. "the AFTLS prescribes that Discretion cannot be Scheduled".
8. "nor can it apply prior to commencement of the Duty Period".
9. "the Cdr was being asked to exercise Discretion to further reduce a Rest Period (in FCO) when Physiological Rest had already been replaced by Normal Rest under the AFTLS provision of 16.3 - this is prohibited".

and major deficiency in the procedural operation of the AFTL system by crew control. This is a very serious charge, and it is regrettable that it is completely unfounded and has been made on the basis of lack of understanding of the AFTLS by the writer of the report. In fact there were no abrogations whatsoever, and it is important to record this.

I agree that this is very serious - hence the ASR/Hazard Report.

It seems even more serious that a CPA General Manager, by his specious interpretation of the AFTLS, has prioritised commercial considerations ahead of flight safety in contravention of CAD and Company Policy:

- “to avoid a cancellation with resulting major inconvenience to the travelling public”.

What is regrettable is that this type of operation appears to have become a regular and accepted practice. What is equally regrettable is that, over the last few years, increasingly “lateral” interpretations are being taken with the AFTLS provisions - without Regulatory oversight - which were carefully written to avoid just those sorts of “lateral” interpretations.

It is worth recalling *why* the FTLWG was originally convened to create CAD 371, and hence the current re-written AFTLS, in the first place:

- In 1996 there were diagnosed cases of aircrew fatigue primarily as a result of CPA’s extensive East-West network.

These cases of fatigue also resulted from flawed and mistaken interpretations of the AFTLS at the time e.g. Crew Control decided that a pilot did not need to have a day off after working 7 days *“because he had crossed the Date Line to the USA so it’s still the same day”*.

I believe these types of fallacious interpretations of the AFTLS are in contravention of both CAD and Company Policy and have no place in a proper aviation safety culture.



民航處 *Civil Aviation Department*

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21 October 2008

The Cathay Pilots Union
1/F 9B Nga Yiu Tau
Sai Sha Road
Sai Kung
New Territories
Hong Kong

Dear Sir,

**Cathay Pacific Airways Approved Flight Time Limitation Scheme
(CPA AFTLS) - Commander Discretion 296a**

Your email letter dated 15 October 2008 is acknowledged and I have asked the Chairman of the CAD FTLWG to respond accordingly.

Yours faithfully,

(Captain Eric CHENG)
Acting Chief, Flight Standards
for Director-General of Civil Aviation

cc FOI(1)

Original copy sent out

21 OCT 2008