

**BETWEEN:**

**G.A. CROFTS**

**Claimant**

**- and -**

**VETA LIMITED**

**Respondent**

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**WITNESS STATEMENT OF RONALD BENJAMIN DAVIES**

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I, RONALD BENJAMIN DAVIES of 4th Floor, South Tower, Cathay Pacific City, 8 Scenic Road, Hong Kong International Airport, Lantau, Hong Kong WILL SAY as follows :-

1. I am the General Manager Operations and Administration of Air Hong Kong Limited. Air Hong Kong Limited is a company which is jointly owned by Cathay Pacific Airways Limited ("**CPA**") and DHL. Its business is the operation of cargo aircraft.
2. I joined CPA on 4 June 1994 where I was employed in CPA's wholly owned subsidiary, Veta Limited ("**Veta**"), the Respondent in this matter. I was originally employed as Assistant Manager (Rostering) reporting to the Manager of Veta.
3. Subsequently, I was promoted and became the Manager Basing Companies, which is the position I held in July 2001. Part of this role was as Manager of Veta.
4. So that the Tribunal may understand the background to the Claimant's ("**Mr Crofts**") dismissal, I set out below some history of this litigation and some background about the structure of CPA and its subsidiaries and associated companies.

**HISTORY OF THE LITIGATION**

5. At the same time that Mr Crofts was dismissed by Veta, 50 other pilots were dismissed by CPA and its other "basing" subsidiaries. The dismissals took place against a backdrop of increasing tension between the airline



and many of its pilots and I explain more about those tensions later in this statement.

6. The 51 dismissed pilots lived in various countries across the world including Hong Kong, Australia, the United States of America ("U.S.A.") and the United Kingdom ("U.K."). All but two of the pilots brought legal proceedings against their employer in at least one jurisdiction. Twelve pilots, including Mr Crofts, brought legal proceedings in the U.K. for unfair dismissal and breach of contract.
7. At the time of the dismissals, no one at Veta or CPA imagined that the dismissal of a pilot might be the subject of legal proceedings in the U.K. or that U.K. standards and law might be applicable to the employment relationship. Indeed as explained below, the Court of Appeal upheld Veta's belief in relation to those pilots employed by CPA and another "basing" subsidiary. As I deal with further below, under Hong Kong law, CPA or Veta may terminate the employment of their officers upon three months' notice or payment in lieu of notice, without the need to give reasons.
8. The claim in this Tribunal was submitted on 16 August 2001 by 12 pilots, including Mr Crofts. CPA and Veta defended the proceedings on the basis that the Employment Tribunal did not have jurisdiction to hear the pilots' claim. That issue was considered by the Employment Tribunal, the Employment Appeal Tribunal, the Court of Appeal and the House of Lords.
9. The hearing before the Court of Appeal occurred on 14 and 15 March 2005. After that hearing, but before the outcome was known, CPA reached an agreement with the trade union representing aircrew employed by CPA and its subsidiaries, the Hong Kong Aircrew Officer's Association ("HKAOA"), in respect of the pilots' U.K. claims. As a result, CPA and Veta made offers in identical terms to each of the 12 pilots in these proceedings. All of the Veta pilots apart from Mr Crofts accepted the settlement offers. In May 2005, the Court of Appeal handed down their decision on jurisdiction, which found in favour of Mr Crofts (although against a number of the other claimants employed by CPA and another "basing" subsidiary). Veta therefore petitioned the House of Lords, which petition was heard in November 2005. Judgment was handed down in January 2006 in Mr Crofts' favour.
10. It was not until the decision of the House of Lords that it was settled that Mr Crofts had the right to bring his unfair dismissal claim in the U.K. In the light of that decision, as the Employment Tribunal will be aware and as explained in more detail later in this statement, Veta has now conceded liability for Mr Crofts' claims of unfair dismissal and failure to give written reasons. Veta has also made an open offer of settlement to Mr Crofts in the



amount of £66,660. That offer of settlement was made on 16 June 2006 and remains open for acceptance. A copy of the settlement offer appears in the bundle at pages [xx to yy - document no. 6].

#### **STRUCTURE OF CPA**

11. I turn now to some background about the structure of CPA. It is Hong Kong's flagship airline and a company listed on the Hong Kong Stock Exchange. Together with its subsidiaries and associated companies, CPA employs a little over 11,000 staff in Hong Kong to provide air travel, catering, aircraft maintenance and ground handling services. At present, CPA operates a fleet of 96 aircraft serving 54 destinations in 27 countries.

#### **AIRCREW SERVICES LIMITED AND VETA**

12. Mr Crofts was originally employed in November 1996 by Aircrew Services Limited ("**ASL**"). A copy of his offer letter appears at pages [xx to yy - document no. 7 of the bundle]. ASL was a wholly owned subsidiary of CPA which at that time operated CPA's freighter aircraft. In December 1999, after negotiations between CPA, Veta and the HKAOA, ASL aircrew were given the opportunity to transfer to work for CPA and/or its "basing" subsidiaries.
13. Mr Crofts was one of those who took up the offer and transferred from ASL to Veta via momentary employment with CPA. The reason for this momentary employment is seniority. Seniority on the aircrew ranking list is of paramount importance in terms of promotion to command.
14. Veta is a wholly-owned subsidiary of CPA and was set up in 1993 as part of the implementation of a policy called "Permanent Basings". Under the Basings policy, members of CPA's aircrew (almost all of whom, at the time, were expatriates living in Hong Kong) were given an option to reside in their own country of origin or choice (e.g. the U.K., the U.S.A. or Australia). Those members of the aircrew who chose to take up this option were described as "going on a base". An employment structure was set up whereby aircrew on a base would no longer be employed by CPA but instead by its wholly-owned "basing" subsidiaries, one of which was Veta. An officer who wished to take up a foreign basing in Europe (like Mr Crofts) or Australia would have to resign his employment with CPA and enter into a separate contract of employment with Veta immediately thereafter. Since 2002 Veta has been the basing employer for aircrew based in the U.K., the rest of Europe and Canada. Another employer, Overseas Aircrew Basing Limited ("**OABL**") was established for aircrew based in Australia. A copy of the Basings Policy applicable as at the time Mr Crofts was dismissed appears in the bundle at pages [xx to yy - document no. 9].

15. My responsibility as the Manager of Veta was to supervise the day-to-day administration of aircrew employed by Veta overseas. A Veta pilot such as Mr Crofts might visit Hong Kong on his roster pattern two or three times a month. It would be common for pilots to come to the Veta office during their time in Hong Kong to have their queries answered. These related to matters such as the operation of the provident fund, the provision of medical benefits, the provision of travel benefits and any other matter related to the Conditions of Service. I would estimate that I therefore had personal dealings with Mr Crofts about twice a month.

**CONCESSION OF UNFAIR DISMISSAL AND FAILURE TO GIVE WRITTEN REASONS**

16. As noted above, in April 2006 Veta conceded liability for failing to give Mr Crofts written reasons for his dismissal and in June 2006 conceded liability for unfair dismissal. (A copy of correspondence relating to that concession appears at pages [xx to yy - document no. 16 of the bundle].) Again, as outlined above, at the time of Mr Crofts' dismissal, no-one at Veta imagined that the dismissal of a pilot might be the subject of legal proceedings in the U.K. or that U.K. standards and law might be applicable to the employment relationship. Veta now accepts that, applying U.K. unfair dismissal laws to Mr Crofts' dismissal, his dismissal fell short of what would be considered "fair" in the U.K.
17. When Mr Crofts wrote to me on 19 July 2001 to ask about the reasons for his dismissal, my response of 24 July 2001 (in which I declined to give him any reasons for his dismissal) was based on my understanding that under Hong Kong law there was no obligation to give any reasons for the dismissal. At the time, I was not aware that Mr Crofts' requests would be judged ultimately by reference to U.K. law. A copy of the correspondence of 19 and 24 July 2001 appears at pages [xx to yy - document nos. 34 and 35] of the bundle.
18. Those concessions having been made, the remainder of this statement focuses on issues relevant to Mr Crofts' breach of contract claim, liability for which Veta contests. In that context however, it is necessary to explain some of the background and events leading to Mr Crofts' dismissal.

**EVENTS LEADING TO MR CROFTS' DISMISSAL**

19. As I have already mentioned, at the same time that Mr Crofts was dismissed by Veta, 51 other pilots were dismissed by CPA and its other "basing" subsidiaries. The dismissals took place against a backdrop of increasing tension between the airline and many of its pilots over a



number of issues, including rostering practices, pay and conditions of service.

20. Despite numerous meetings between the HKAOA, CPA and Veta in the first half of 2001, the assistance of the Labour Department of the Hong Kong Government and both sides' efforts, negotiations broke down irretrievably on 30 June 2001, and on 3 July 2001 the HKAOA launched a campaign to disrupt CPA's operations.
21. The campaign launched by the HKAOA was called the "Maximum Safety Strategy" ("MSS"), a copy of which appears in the bundle at pages [xx to yy - document no. 23]. The MSS was packaged and held out as a campaign to improve flight safety in response to CPA and Veta's alleged refusal to implement safe and effective rostering practices.
22. In reality, the MSS was designed to cause disruption to the airline and inconvenience to the travelling public, in order to put pressure on management to accede to the HKAOA's requests. One salutary example - paragraph 12.3 of the MSS reminds pilots to erase contents of Cockpit Voice Recorders after landing. This has nothing to do with safety, but is to encourage pilots to destroy records of what was said during the flight.
23. From about mid-1997 onwards (well before the launch of the MSS), CPA, Veta and the other "basing" subsidiaries experienced an increasing trend of a general withdrawal of enthusiasm from a number of crew members. This manifested itself in organised behaviour among aircrew of increased absence from the workplace, uncontactability while not on duty and a generally unco-operative attitude in times of need.
24. While CPA and Veta believed that the majority of their aircrew officers were diligent, capable professionals, the MSS campaign was the "final straw" in the deteriorating relationship between CPA, Veta and a number of their employees. The impact of the MSS was very significant.
25. The MSS was intended by the HKAOA to have a cumulative effect. Flights would inevitably have been delayed or cancelled. This would have a knock-on effect because aircraft would not be positioned in the correct place. (If one cancels a flight from say Hong Kong to Sydney, one is likely to have to cancel the return flight on that aircraft from Sydney.)
26. Cancellations and delays would inevitably have a commercial impact as well as an impact on CPA's reputation. CPA had a reputation worldwide for reliability and on-time performance. That reputation was threatened by the MSS campaign. Reputation was and is a very important asset in the highly competitive airline industry, and was why CPA and Veta had to take decisive action. Some press reports from the time of the dismissal bear



this out, for example the press report that appears at pages [xx to yy document no. 30] of the bundle.

27. The MSS was the "trigger" that caused CPA and Veta to take stock more generally of the extent to which individual aircrew could be relied upon to work in the best interests of the two companies. CPA and Veta have always considered themselves entitled to decide who to keep in their employment by reference to factors which go beyond mere technical qualifications and adherence to basic minimum standards of support.
28. To that end, CPA and Veta decided to undertake an assessment of all their aircrew officers to ascertain their individual attitudes towards the aims, objectives and interests of CPA and Veta. The assessment was done by way of a comprehensive review of the employment histories of each aircrew officer in the employ of CPA and Veta.
29. Twenty members within the management of CPA and Veta were recruited to form a panel (the "**Review Team**") to conduct the review. The Review Team was chaired by Captain Barley, the Director of Flight Operations. I was present to represent Veta.
30. At the commencement of the review process, CPA crew control had produced a list of all aircrew officers. This had a reference on it to the despatch of attendance letters, other warnings and an indication of whether the aircrew officer had been unco-operative with CPA management. A copy of that list appears in the bundle at pages [xx to yy - document no. 41].
31. The attendance letter programme had been commenced to deal with cases of absence which occurred repeatedly on the part of certain pilots. An example would be calling in sick at the end of a period of guaranteed leave, thus extending the period of days off. A copy of the list containing details of aircrew with the worst attendance record appears in the bundle at pages [xx to yy - document no. 40].
32. The review did not limit itself to those individuals on the list who could be described as having the worst track record. Instead, the review covered every officer employed by CPA and Veta.
33. In the course of this first review, a list of officers was identified as being those about whom there was a question mark as to whether they were prepared to act in the best interests of CPA and Veta. The review team then went on to the second stage of the review whereby we conducted an open, in-depth discussion of the employment history of all those officers not identified in the first review.



34. As we went down the list, each member of the Review Team who had personal experience of or an opinion concerning that officer would call out the officer's name for discussion at the meeting. Members of the Review Team then held a round the table discussion of the officer concerned. Each member of the Review Team was invited to draw from his own experience or assess other members' experience of the officer in question, and discuss whether the information gathered showed the officer had not, over the previous few years, been working in the best interests of CPA or Veta.
35. When Mr Crofts' name came up for discussion, I raised the issue by saying that he was a difficult and prickly character. I had formed this view over a number of years, based on my own personal experiences with him and on a number of incidents that were reported to me by various Veta and CPA employees.
36. My opinion was that Mr Crofts regarded himself as important because he was the pilot of an aircraft and thought those who were not flying (i.e. ground crew and other support staff) were simply there to provide him with conveniences (for example, hotel accommodation, limousine transport and so on) as and when he demanded them. If any of these conveniences were not available for any reason or were not produced as quickly as Mr Crofts felt appropriate, he quickly let the person responsible know his opinion of them in no uncertain terms.
37. His complaints were always about trivial administrative matters where perceived inefficiency had caused him irritation. I met Mr Crofts on a number of occasions to try and resolve some of these issues. I recall we had one or two heated discussions over the way he perceived his life was managed by Veta with my remonstrating with him to show more consideration for other members of staff.
38. In addition, many members of ground staff at major airports such as London, Dubai, Frankfurt and New York, as well as staff in the Veta office in Hong Kong, all had confrontations with Mr Crofts at one time or another.
39. Little of this was ever recorded in writing. Personal and training files were kept on all members of aircrew. These contained details of the administration of an officer's employment and flying performance. Aircrew operating passenger flights have the responsibility for the safety of passengers on board the aircraft. They also have in their hands the maintenance of extremely expensive equipment (a new Boeing 747-400 costs in the region of US\$200 million). Understandably, therefore, CPA regarded the performance of flight duties as being the paramount concern of management. As the person responsible for administration of Veta's employees, if a problem arose with aircrew, I would deal with it and that



was the end of it. It was not the way things were done at Veta to keep detailed notes on personal files.

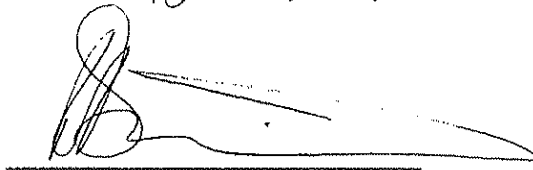
40. However, one or two complaints about Mr Crofts were recorded on his personal file. One is a report of an incident at JFK airport on 14 September 2000 when he was aggressive and rude to a member of JFK ground crew. The other is a complaint against Mr Crofts by another pilot, First Officer Parrock, in March 2001. Both matters were investigated. In the case of the Parrock complaint, Mr Crofts was urged to reconsider his attitude to colleagues. In the case of the incident at JFK airport, a letter of reproach was sent to Mr Crofts and a copy included on his personal file. Copies of correspondence relating to these incidents appear in the bundle at pages [xx to yy - document nos. 21 and 22 and document nos. 5 to 16 in R's additional docs - not yet merged.].
41. It was this sort of attitude that I had in mind when, at the Review Team meeting, I said he was not the sort of person who was working in the best interests of CPA or Veta. There was no dissent to this from anyone else in the room, some of whom would have known Mr Crofts, some of whom would not.
42. Having heard from each member, Captain Barley invited us to reach a decision whether the officer's employment should be terminated. If a consensus were reached among all 20 members of the Review Team, Captain Barley confirmed and formalised the recommendation to terminate the employment of the officer concerned.
43. The Review Team meeting lasted for two whole days, commencing Friday 6 July 2001 and ending in the evening of Saturday 7 July 2001. On Monday 9 July 2001, I wrote a letter to Mr Crofts terminating his employment. A copy of that letter appears in the bundle at page [xx - document no. 26].
44. Under Veta's Conditions of Employment an officer may resign by exercising his or her contractual right to do so upon giving 3 months' notice or payment in lieu thereof. By the same token, under Hong Kong law, CPA or Veta may terminate the employment of their officers in the same manner, without the need to give reasons. A copy of Veta's Conditions of Service, under which Mr Crofts was employed, appears at pages [xx to yy - document no. 13] of the bundle. The paragraph relating to notice periods is 34.3 at page [xx].
45. I received Mr Crofts' reply of 19 July 2001 in which he asked for his reasons for his dismissal. As noted above, I sent a response on 24 July 2001 in which I declined to give him any reasons for his dismissal.

#### **DISCIPLINARY PROCEDURES**



46. Mr Crofts was not dismissed for misconduct or disciplinary reasons. It would not have been appropriate for Veta to apply the Disciplinary Procedure in Appendix 1 of the Veta Conditions of Service 1999 on which Mr Crofts was employed. A copy of the Disciplinary and Grievance Procedures appears at pages [xx to yy - document no. 14] of the bundle. As can be seen on reading the Disciplinary Procedure it applies only to "disciplinary action" concerning "alleged offences". This would have required Veta to identify an "alleged offence" committed by Mr Crofts. As I explained above, during the period leading up to 9 July 2001, Mr Crofts had not committed any "disciplinary offence" and, as such, Veta could not have initiated disciplinary proceedings.
47. As outlined earlier in this statement, the sorts of issues that the Review Team took into consideration were attendance and sickness records, co-operation, helpfulness, attitude towards colleagues and so on. None of those issues were capable of being translated into "disciplinary action", hence the Disciplinary Procedure was not applicable.
48. In any event the matter was not treated as a disciplinary matter. Nothing in the Veta Conditions of Service or in the Disciplinary Procedure itself required the procedure to be initiated prior to dismissal.

Dated the 13<sup>th</sup> day of July 2006



**RONALD BENJAMIN DAVIES**