Ladies & Gentlemen

UK Employment Tribunal Verdict

The UK ET handed down its verdict on George's case on 16th October. It found that:

1. The reason for the dismissal was George's conduct.
2. Veta was in breach of the relevant legislation by failing to provide George with written reason(s) for his dismissal.
3. Veta was in breach of contract by failing to operate the contractual disciplinary procedure.
4. Veta unfairly dismissed George.
5. Veta was ordered to pay a total of GBP70,291.49 in compensation.

The Tribunal did not accept Veta's defence that they could simply dismiss George under the terms of clause 34.3 of the Veta Conditions of Service (the 3 months' notice clause). Rather they are compelled by the UK legislation to provide written reason(s) for dismissal. This is very significant. It now means that, for UK based pilots at least, 34.3 is effectively null and void in cases of this nature. Cathay and its subsidiaries will no longer be able to subject UK based pilots to their "fire at will" management policy. Let us remember that one of our prime objectives all along has been to ensure that what happened to us could never again happen to another Cathay pilot. In the UK we have achieved our objective.

Despite their protestations to the contrary, the evidence given by Veta demonstrated that they chose to dismiss George solely as a result of their view of his conduct and for no other reason. Therefore, under the terms of his contract they should have instituted the D&GP which they failed to do. As a result, they acted in breach of his contract. Previously Veta had refused to concede this point and had stated that they would "vigorously defend" this allegation. In the event their vigorous defence failed. The finding of breach of contract is very significant in that it has repercussions in other actions that are in progress.

The Tribunal found that George was unfairly dismissed by Veta. In other words, George's conduct did not justify his dismissal. Indeed the evidence submitted by Veta from George's personal file contained nothing which justified such action. Additionally, 3 of his managers intervened personally in an attempt to have the decision reversed but they were ignored. There was only one person in the star chamber meeting who made any comment at all about George and that was Ron Davies. Other than the evidence from George's personal file, Davies was unable to back up any of his statements in court about George's conduct with documentary evidence. Rather it was all from memory. It was remarkable that he could remember several interactions with George so vividly and yet was unable to recall which manager(s) instructed him to completely disregard the D&GP. The overwhelming impression gained was that George was fired because one man had a personal dislike for him.

Regarding the compensation awarded, this is only a first step. We had asked for a reinstatement order which the Tribunal did not grant largely as a result of evidentiary matters. We are currently taking advice and it seems that we may have good grounds for appealing this part of the verdict. If certain evidence which only came to light subsequent to the hearing had been presented to the Tribunal, it may have come to a different conclusion. We will keep you informed on this as matters progress. Plans are also in hand to obtain additional compensation for George through alternative channels should this become necessary.

Remember, we knew from the outset that the financial compensation available under our current causes of action in the UK was capped by the legislation. For us, unlike our opponents, this is not just about the money. It is about the principles and whether or not a contract of employment with CPA and its subsidiaries is worth the paper that it's written on or whether or not they are free to continue to behave like Victorian mill owners in dealing with their employees.

In the UK we have achieved our objective from the point of view of employment protection and, equally importantly, George's name has now been cleared.

The Tribunal also made some interesting comments in their ruling.

Veta stated that George's request to be reinstated was a tactic designed to increase his compensation rather than a genuine desire for re-employment. The Tribunal ruled that "*… whether correct or not it is irrelevant.*"

In relation to the HKAOA brokered "offer" which all the UK Veta pilots but George were coerced into accepting, the Tribunal stated that, "*We heard much evidence in relation to the settlement offer and were invited to draw the inference that* [George] *was not keen to be reinstated because he did not accept it.* [George] *was entitled to decline the settlement offer. It did not guarantee re-employment, any such re-employment would be at first officer level …was on a reduced salary and did not acknowledge unfair dismissal.*" In other words "the offer" failed totally to address any of the primary issues relating to his dismissal - a fact that was pointed out repeatedly to the HKAOA leadership at the time before it was railroaded through. It seems that the Tribunal agrees with our view that, by pursuing a "negotiating" policy of getting to a deal at any cost, the HKAOA leadership not only failed in its duty of care to its Membership but also dismally failed the 49ers and their families.

Our team of barristers in Hong Kong has been briefed on these and other matters and, subsequent to a meeting held on Tuesday, we will be applying shortly for our case here to be listed for trial.

John Warham
20th October 2006.