

BETWEEN:

G.A. CROFTS

Claimant

- and -

VETA LIMITED

Respondent

WITNESS STATEMENT OF ANDREA IRENE LUCAS

I, ANDREA IRENE LUCAS of 3rd Floor, Central Tower, Cathay Pacific City, 8 Scenic Road, Hong Kong International Airport, Lantau, Hong Kong WILL SAY as follows :-

INTRODUCTION

1. I make this statement on behalf of the Respondent, Veta Limited ("**Veta**"). I am the Manager Veta Limited. I have held this position since 1 March 2003, prior to which I was the Flight Crew Recruitment Manager for Cathay Pacific Airlines Limited ("**CPA**"). I have been employed by CPA since 15 December 1997.
2. I took over the position of Manager Basing Companies (which includes the role of Manager Veta Limited) from Mr Ron Davies when he moved to Air Hong Kong Limited. My current duties are therefore the same as Mr Davies' duties were at the time of Mr Crofts' dismissal. However, I had no involvement in the dismissal of Mr Crofts and, prior to his dismissal, I had never met him.
3. Veta's main evidence in this matter is given in the witness statement of Mr Davies, which I have seen in draft. I only deal in this statement with two issues. The first issue is how long it takes to follow Veta's disciplinary procedure and the second relates to whether or not Mr Crofts could or should be reinstated to his old job.

DISCIPLINARY PROCEDURE

4. As the Tribunal will appreciate, the first issue is only relevant if it decides that Veta breached Mr Crofts' contract of employment by not operating its disciplinary procedures prior to the termination of his employment. As dealt

with in Mr Davies' witness statement, Veta's position is that the disciplinary procedure was not applicable to Mr Crofts' dismissal.

5. The purpose of the following section is simply to point out that even if the disciplinary procedures had applied (and Veta's firm position is that it did not), then the exhaustion of the procedure would have taken a matter of days. If a disciplinary offence merits dismissal, from the point of informing the Officer in question that he or she has a case to answer to the point of informing the Officer of his or her dismissal, takes on average a little less than 10 days (I elaborate on this figure at paragraph 20 below).

STAGES OF DISCIPLINARY PROCEDURE IN OPERATION

6. I have set out below brief details about the stages in Veta's disciplinary procedure. A copy of Veta's Disciplinary and Grievance Procedure appears at pages [xx to yy - *Doc no. 14*] of the bundle.
7. As the Tribunal will see on reading the disciplinary procedure, responsibility for invoking the disciplinary procedure rests with the Managers Flying. What usually happens is that an incident would be reported to a Manager Flying (for example, by another Officer or a member of the ground staff). The Manager Flying will then conduct a preliminary investigation. This might involve speaking to the reporting party, the Officer in question and any other Officer or ground staff member who may have been involved and also obtaining any flight data (from the flight data recorder, for example). The Manager Flying will then use that information to decide if there is a "case to answer" (as outlined at paragraph 9 of the disciplinary procedure).
8. The disciplinary procedure provides for five levels of disciplinary action: (in increasing order of severity) admonishment, warning, reprimand involving sanctions, dismissal and summary dismissal.
9. An admonishment is a verbal rebuke which is not recorded on the Officer's personal file. A warning is a written admonishment which is recorded on the Officer's personal file. There is no requirement under the disciplinary procedure for the Officer to be called to a disciplinary hearing prior to receiving either an admonishment or a warning (as outlined at paragraphs 8.1.b and 10.2.a of the disciplinary procedure).
10. However, if, having decided there is a case to answer, the Manager Flying believes the sanction may be more severe than an admonishment or a warning, he must call the Officer in question to a disciplinary hearing. Following that hearing, the Manager Flying must inform the Officer of the sanction (if any) and this must be confirmed in writing.

11. The Officer then has two levels of appeal against the disciplinary action. The First Stage Appeal is to the General Manager Aircrew or the General Manager Flying and the Final Stage Appeal is to the Director of Flight Operations.
12. The disciplinary procedure sets out specific time limits for each of these stages and states (at paragraph 4) that those involved must treat the matter with high priority. The time limits must be adhered to wherever possible as outlined in paragraph 4.2 of the disciplinary procedure.
13. Without having been involved in the negotiations (with the Hong Kong Air Officers Association ("HKAOA")) over the precise terms of the disciplinary procedure, I cannot say from my personal knowledge why time was and is considered to be of the essence. However, my view is that the reason why Veta and CPA treat disciplinary issues with the highest priority is partly in an effort to ensure that rosters are disrupted as little as possible and partly to ensure that the life of the Officer involved is disrupted as little as possible. It is in everyone's interests that the matter is resolved as swiftly as possible.

RESEARCH UNDERTAKEN

14. In the course of preparing this statement, rather than debate hypothetical examples, I have focused on actual examples.
15. As the disciplinary procedure in question was introduced by Veta in the 1 July 1999 Conditions of Service, I have personally undertaken research to determine the number of times on which the airline has invoked disciplinary procedures between then and the date on which my research concluded, namely 24 June 2006.
16. In order to do so, I checked the master correspondence files of the Managers Flying dating back to 1 July 1999 (since it is the Managers Flying who trigger the disciplinary procedure by determining whether there is a case to answer). The master correspondence files are held by the respective secretaries of the four Managers Flying. Ordinarily, every piece of correspondence sent by the Managers Flying should be filed on the master files but I cannot vouch for that.
17. I found that, according to the files, between those dates, the airline invoked the formal disciplinary procedure on 37 occasions. The master correspondence files do not contain details of admonishments since, by definition, these are informal verbal rebukes.
18. By way of example, the sorts of "disciplinary offences" involved range from breach of Veta's regulations (for example, breach of absence reporting

regulations), failure to manage flights in a manner consistent with the responsibilities of the rank, deliberate attempts to mislead Veta/a manager, and the use of physical violence.

19. I then checked the personal files of the Officers involved in the 37 “disciplinary offences” to try and track the time scales in each case. The disciplinary procedure sets out a time limit by which each of the stages must be completed. Those time limits and the average time taken in dealing with them are as follows:

Stage	Maximum time limit	Average time
a) Completion of preliminary investigation to written notification of alleged disciplinary offence	3 working days	3 working days
b) Written notification of alleged disciplinary offence to disciplinary hearing	7 working days	2.53 working days
c) Disciplinary hearing to written notification of disciplinary action	7 working days	5.61 working days
d) Written notification of disciplinary action to submission of First Stage Appeal	30 calendar days	Dependent upon the Officer
e) Submission of First Stage Appeal to appeal hearing	7 working days	The precise number of days is unclear in a number of cases. In general, it is fair to say appeal hearings are arranged well within the 7 working days permitted.

f) First Stage Appeal hearing to written notification of outcome of appeal	3 working days	2 working days
g) Written notification of outcome of First Stage Appeal to Final Stage Appeal, if requested	7 working days	Largely dependent upon the Officer
h) Final Stage Appeal hearing to written notification of outcome of Final Stage Appeal	3 working days	2 working days

20. Six of the 37 "disciplinary offences" resulted in dismissal. Of those six dismissals, two were summary dismissals (without notice or pay in lieu). In the other four cases the Officers received pay in lieu of notice. In each of the six cases, the dismissals took effect after stage c) outlined above, irrespective of whether the Officer in question then went on to appeal his dismissal (in all the cases, the Officers involved were male).
21. Based on the average of the six cases that resulted in dismissal, the average time scale from the point at which the Officer was informed there was a case for him to answer to the point at which he was informed that he was to be dismissed as a result of it was 9.5 working days. This is slightly shorter than the average time scale of all 37 cases outlined above (which is a little over 11 working days).
22. If the Officer in question were to appeal against dismissal, that would not affect the date of dismissal, unless he were reinstated on appeal. In other words, the decision to dismiss is not "frozen" pending the outcome of the appeal processes.
23. Of the six cases that resulted in dismissal, two of the Officers lodged an appeal and I have set out below further details about the time frames in those cases. Some papers from the Officers' personal files which support the time frames outlined below appear in the bundle at pages [xx to yy - *Document nos. 17 and 18 in the additional bundle, yet to be merged*]. For confidentiality and data protection purposes, any details that would enable identification of the Officers in question have been anonymised.
24. The Tribunal will see from the dates outlined below that these two dismissals both date from early July 2001 at approximately the same time

as Mr Crofts and the other 50 pilots were dismissed. Although I did not hold my current position at the time, my understanding is that this is a coincidence and that these two dismissals had nothing to do with the 51 dismissals.

25. My view is that the fact that CPA and Veta applied the disciplinary procedure in these two cases reinforces Mr Davies' evidence: the disciplinary procedures were not applicable to the 51 dismissals (including Mr Crofts) because the pilots had not committed any identifiable "disciplinary offence". This clearly contrasts with these two cases where "disciplinary offences" were committed and dealt with in accordance with Veta's procedures.
26. The remaining four dismissals (none of which resulted in an appeal), took place in April 2001, November 2001, May 2002 and September 2002, respectively.

CASE ONE

27. This case involved a breach of flight time limitations and events moved very quickly in the early stages. Flight time limitations are an essential safety mechanism. They ensure that pilots do not fly above a certain number of hours and that they have adequate rest periods.
28. Day 1 (4 July 2001): Prior to the start of his roster, the Officer flew from London to Hong Kong as a passenger on one of CPA's aircraft, arriving in Hong Kong at around 6pm. As there were no spare passenger seats on that flight, the Officer sat in the cockpit with the Officers on duty. On arrival in Hong Kong, the pilot of the aircraft reported his passenger Officer, realising that the Officer planned to report for duty later that evening in breach of flight time limitations and rest periods.
29. The Officer was due to report for duty at around 10pm that evening (for a flight due to leave about an hour and a half later). However, as soon as the ICM Scheduling Manager was informed of events, he immediately stood down the Officer and on safety grounds prevented him from flying.
30. Day 2 (5 July 2001): The following morning, the Officer was notified in writing that he was to be suspended without pay for up to 14 days pending further investigation.
31. That investigation must have concluded quickly because on the same day the Officer was called to a disciplinary hearing, attended the hearing and was notified in writing that the outcome of the hearing was that he was to be dismissed, without notice but with pay in lieu of notice. I assume that the reason for the speed was in large measure due to the seriousness of

the disciplinary offence. There can be no compromise of safety within the airline.

32. The Officer's dismissal was thus effective on 5 July 2001, one working day after the incident.
33. Day 34 (6 August 2001): 32 calendar days elapsed before the Officer appealed against his dismissal.
34. Day 36 (8 August 2001): The First Stage Appeal hearing was held two working days later.
35. Day 37 (9 August 2001): On the working day following the First Stage Appeal hearing, the Officer was notified in writing that his appeal had been unsuccessful. On the same day the Officer exercised his Final Stage right of appeal.
36. Day 38 (10 August 2001): The Final Stage Appeal hearing was held the following day and the written decision given on the same day.
37. As noted above, the fact that the Officer exercised his full rights of appeal did not affect the date of his dismissal. His dismissal took effect on day 2 (5 July 2001), not on day 38 (10 August 2001).

CASE TWO

38. This case involved an Officer failing to report for duty on 2 July 2001. Going briefly into background, this Officer's flight duties were changed mid-roster. When this happens (as it does relatively often) a message is delivered to the pilot. In this case the message was delivered to the Officer on board the aircraft via an electronic messaging system. Although the Officer in this case admitted that he had received the message, he said that he had not had the opportunity to pay proper attention to the message and was not aware that he was supposed to report for a different duty at a different time.
39. Days 1 to 3 (2 to 4 July 2001): The preliminary investigation took two working days to complete. On day 3 the Officer was notified in writing that there was a case to answer and called to a disciplinary hearing.
40. Day 4 (5 July 2001): The disciplinary hearing took place the following working day and the Officer was notified in writing that the outcome was that he was to be dismissed without notice but with pay in lieu of notice.
41. The Officer was dismissed on 5 July 2001, three working days after the incident.

42. Day 29 (30 July 2001): The Officer appealed against his dismissal 25 calendar days after written notification of his dismissal.
43. Day 38 (8 August 2001): The first appeal hearing was held seven working days following the notice of appeal, on a date of the Officer's choosing.
44. Day 39 (9 August 2001): The Officer was informed in writing on the following working day that his appeal was partly upheld. As a consequence, his dismissal was revoked and the Officer was permitted to return to work although at a lower rank (from Captain to Senior First Officer) for a period of two years.

MR CROFTS' REINSTATEMENT

45. I am informed that rather than seeking compensation for his dismissal, Mr Crofts is seeking to be reinstated back into his old position. Veta believes very strongly that any such reinstatement would be unworkable, unfair and impracticable for a number of reasons.
46. It may assist the Tribunal to understand how Veta and CPA operate the "Aircrew Seniority List" and the impact this has on an Officer's career progression. The ultimate aim for the overwhelming majority of aircrew is to become a Captain. As Mr Davies' outlines in his witness statement, relative seniority dictates when an Officer can be considered for promotion and this is dependent only on ability.
47. Promotion through the ranks is controlled very strictly by the Aircrew Seniority List. The list operates according to length of service with Veta, CPA or the applicable "basing" subsidiary. Indeed, were Veta or CPA to promote otherwise than in accordance with that list, it would be in breach of the Officers' Conditions of Service. For example, the Conditions of Service prevent the airline recruiting external pilots directly into Captain positions. They also prevent Veta employing any pilot other than from CPA or another of its "basing" subsidiaries. Veta cannot, for example, recruit a First Officer ("FO") directly from another airline - only CPA can do that.
48. From Mr Crofts' personal file, I am aware that at the time of his dismissal his position was as a Captain of a freighter aircraft, the B744F (sometimes also referred to as "the 400"), that he was permanently based at London Heathrow and lived in Surrey. Letters documenting these terms appear in the bundle at pages [xx to yy - *Doc. no 17 (draft agreed list) and 4 (R's additional list).*]
49. I have asked the current Flight Crew Recruitment Manager (which, as noted above, was the position I held prior to becoming Manager Basing Companies) whether there are any vacancies for Captains (also called

"command positions") for the B744F permanently based at London Heathrow. If there were any such vacancies, Veta would be the appropriate employer as the "basings" employer for Europe.

50. I have been informed that there are no such command positions. There was one such command position in 2005 but that was filled in December 2005. Moreover, it was filled by an extremely senior officer, ranked at number 564 of the Aircrew Seniority List (number 1 being the most senior, in a list of approximately 2000 pilots.) I explain more about Mr Crofts' position on this list below. Neither Veta nor the airline operate any other kinds of freighter aircraft out of London Heathrow.
51. A very significant period of time has elapsed since Mr Crofts' dismissal (over five years). It would have been completely impracticable for Veta to hold open Mr Crofts' position at Heathrow for that period of time. This is not a case where Veta can clearly point to one person and say that he or she has replaced Mr Crofts. Following the dismissals of the 51 pilots in July 2001, those pilots were removed from the Aircrew Seniority List and the Officers below those pilots in seniority correspondingly moved up the list. During the rest of that year, up to 31 December 2001, the airline then recruited at more junior levels (at FO and Second Officer ("SO") rank) to maintain (and in fact slightly increase) the overall Officer numbers.
52. If Mr Crofts were to be reinstated back to his old job, this would result in over-manning of the 400 freighter aircraft at London Heathrow. This would have a negative impact on productivity of the 400 freighter Captains at that base. By way of explanation, CPA operates a "hub and spoke" model, the "hub" being Hong Kong and the "spokes" being all other destinations to and from which we operate. Each hub and spoke represents a single route. To operate at maximum efficiency and productivity, there should be neither over nor under-manning of a base. For a base to operate efficiently and productively, both aircraft and aircrew need to be aligned with the flight schedule. When that happens, both aircraft and aircrew will be correctly "positioned" (in other words, in place, for a return flight, for example). If a base is over or under-manned then aircraft will not be correctly positioned. If an aircraft is not correctly positioned, then the Captain (and indeed other aircrew) would have to be positioned as a passenger.
53. The more positioning that the London Heathrow 400 freighter Captains would have to do as a result of Mr Crofts' reinstatement, the less flying they can do and in turn the less productive they are. This may have an impact on their earnings capacity (because we have a productive element to our pay). At the moment, the London Heathrow 400 freighter base is manned correctly and should remain so for the foreseeable future.

54. At the point of his dismissal, Mr Crofts was at number 1205 on the Aircrew Seniority List. If he had not been dismissed, he would currently be at approximately number 975 on the list. This would not entitle him to apply for a command position on the passenger fleet. Currently promotion for passenger command stands at number 803. In other words, even if he had not been dismissed, there would still be another 172 Officers eligible for promotion before Mr Crofts.
55. Based on our forecasts for the next few years (taking into account the age of the pilots at the beginning of the Aircrew Seniority List, who is due to retire and so on), we anticipate promoting around 90 Officers per year to passenger command positions. This means that it would take almost a further two years before Mr Crofts would be eligible for such a promotion. Even then it would be by no means certain that the vacancy would be for a London base.
56. In addition, it appears that Mr Crofts has been out of full-time flying for a long period of time and is now a B737 simulator instructor. Incidentally, neither Veta nor CPA have any B737's in the fleet at all. I do not know whether Mr Crofts' B744 rating or his Hong Kong Professional Pilot's Licence are current.
57. Quite apart from these practical considerations, Veta fundamentally objects to Mr Crofts' reinstatement for the very same reason that it dismissed him. It lost all trust and confidence in him and remains convinced that Mr Crofts' difficult personality means that he is incapable (or unwilling) to build effective working relationships with both aircrew and ground staff colleagues.
58. Whilst all employers hope that their employees will operate well as a team, for airlines, cohesion and high levels of trust are imperative. Both passenger and freighter pilots are responsible for the lives of others and for an extremely expensive aircraft. Veta cannot employ any pilot in whom it does not have 100% trust and confidence and to do otherwise could compromise flight safety.
59. It will come as no great surprise to the Tribunal that given the five year history of this litigation, relations between Veta and Mr Crofts are probably even more fractured now than at the point of his dismissal. All other Veta employees who brought claims in the UK settled their cases well over a year ago. As time has gone on, relations between Mr Crofts and Veta have become more polarised, not less.
60. Additionally, Veta believes that Mr Crofts' negative attitude and behaviour toward colleagues is entrenched. Despite Veta's acknowledgement of its breach of UK unfair dismissal laws and reasonable attempts to settle with

him, Mr Crofts has shown himself unwilling to compromise. Veta has no reason to believe that if Mr Crofts were to be reinstated, his attitude and behaviour would become more balanced or reasonable. There is simply too much water under the bridge for either Veta or Mr Crofts to put their differences behind them and build anything approaching an effective working relationship which is absolutely critical to the safety and reputation of an airline.

61. Finally, on mitigation more generally, I am very surprised that Mr Crofts claims that in the last five years he has been unable to secure permanent employment. I was CPA's Flight Crew Recruitment Manager until March 2003 and was aware of what was happening to recruitment levels in the industry. My role now does not necessitate up-to-date knowledge of competitor recruitment, but I do keep an eye on this issue. Whilst it is fair to say that the industry has had its ups and downs in recent years, in the last two to three the industry in Europe and Asia Pacific has done reasonably well and many airlines are recruiting.

Dated the ^{13th} day of July 2006

A handwritten signature in cursive script, appearing to read 'A. Lucas', is written over a horizontal line.

ANDREA IRENE LUCAS