

IN THE EMPLOYMENT TRIBUNAL LONDON SOUTH

CASE NO.2304383/2001

B E T W E E N :

GEORGE ANDREW CROFTS

Claimant

- and -

VETA LIMITED

Respondent

WITNESS STATEMENT OF MR JOHN SIMPSON WARHAM

I, John Simpson Warham of Sai Kung, Hong Kong

WILL SAY as follows:-

1. Until 10th July 2001 I was a Senior Captain employed by Cathay Pacific Airways ("CPA"). I was dismissed by CPA at the same time as Veta Limited ("Veta") dismissed Captain Crofts. As will be clear from the papers disclosed in these proceedings Veta was a wholly owned subsidiary company of CPA and used solely as a device by CPA to employ pilots who were based outside of Hong Kong in places such as the UK, Australia and the USA. Pilots employed by both Veta and CPA flew the same operations using CPA aircraft. The circumstances of the dismissals were identical for both CPA pilots and Veta pilots.

2. I joined CPA in 1985 as a First Officer. At that time CPA only recruited experienced pilots. Typically they were in their early to mid thirties and had significant flying experience. CPA had a minimum requirement of 4,000 flying hours with heavy jet experience. The career structure was designed around a minimum 15 year career with the Provident Fund (Pension Scheme) being structured to provide a final salary benefit lump sum payout at the end of that time. A typical time to command (i.e. promotion to Captain) in those days was around 4 to 5 years which was relatively short for a large international airline and reflected the high experience levels of the pilots joining CPA at that time.

3. During 2001, there were negotiations between CPA and HKAOA about rostering practices and safety matters. There were a number of highly contentious issues. After 4 months of negotiating, talks ended without agreement. On 20th June 2001, at a General meeting of the HKAOA the following resolution was passed (page):

'Following Cathay Pacific Airways' management's failure to resolve long outstanding issues on Rostering, Remuneration and Benefits, all Full members of the Hong Kong Aircrew Officers' Association will undertake limited industrial action with effect from 1st July 2001, until further notice'

4. Following further intervention by the Hong Kong Labour Department ("LD"), the implementation date for this resolution was delayed to 2nd July 2001. The HKAOA did not, however, at that stage, instruct its Members what form Limited Industrial Action would take. However, contemporaneously, the HKAOA issued a document to its Members entitled Maximum Safety Strategy ("MSS") (page). This document comprised of salient excerpts from CPA's own Operations Manuals where they relate to issues of flight safety. As I understood it, it was introduced as an aide memoir to pilots in order to remind them of their flight safety responsibilities and duties during the period of Limited Industrial Action. Whilst I personally took no part in the compilation, editing, publishing or distribution of the document, its purpose, as stated

by the HKAOA, was “to make our operations safer” and it addressed many areas of operational flight safety including crew rostering, and the debilitating and potentially dangerous effects of fatigue. I understood that the MSS was intended to ensure that Members of the HKAOA performed their duties as pilots in strict compliance with CPA’s Operations Manuals. CPA has never to the best of my knowledge suggested to any pilot that adhering to the MSS was a breach of his contract of employment and has not so alleged in any subsequent legal proceedings.

THE DISMISSALS

5. On 5th July 2001 CPA dismissed three pilots. In relation to those cases I understand that the Disciplinary and Grievance Procedures (“D&GP”) (page) were followed in accordance with the terms of their contracts. One of the pilots was exonerated of all charges only to be asked to step into the office next door where the Director Flight Operations Mr. Kenneth Barley was waiting for him and issued him with a pre-prepared separate letter of dismissal (page).
6. On 9th July 2001 letters of dismissal were sent out to 49 pilots (“the 49ers”) including George Crofts and myself (page). As can be seen from the terms of the letter the dismissal took immediate effect and the company indicated that three months’ salary in lieu of notice would be paid. No reason was given for the termination.
7. At the same time as the letters of dismissal were sent out, on 9th July 2001, Mr. Philip N L Chen, Director and Chief Operating Officer of CPA sent a letter to all flight crew indicating that “*the company has chosen to act to protect its future and its people*”. The letter further indicated that, “... *after a review of the*

employment history of all flight crew the company has terminated the employment contracts of 49 pilots” (page). No other reason for the termination was given at that time.

8. I subsequently became aware that the Director of Corporate Development of CPA, Mr. Tony Tyler had made a speech on 9th July 2001 which was reported in the press and was also posted on the CPA website (page). In that speech he had referred to the dismissal of the 49 pilots and said, “*We have taken this very serious step only after extremely careful consideration. We have undertaken a detailed review of the employment history of all our pilots and identified those who, we feel, cannot be relied upon to act in the best interests of the company in the future. We have, essentially, lost confidence in those employees who have been terminated and decided that their continued employment with the company is no longer in the best interests of the company as a whole*”.

9. I also became aware that at an interview with CNN on 10 July 2001 Mr Tyler was quoted as saying “*...the reason we made these decisions yesterday.....we decided we were not prepared to accept what the Union were saying, but the dispute will go on until the Company’s resources were drained.....and we felt that firm and resolute steps were necessary.*” (page)

10. In the same interview Mr Tyler was also recorded as saying that, “*... the dismissals had nothing to do with the industrial action...*” and that, “*... they would have happened anyway because of the examination of the pilots’ records.*”

THE DISCIPLINARY AND GRIEVANCE PROCEDURE

11. As I have indicated earlier in this witness statement I was directly involved in negotiations with CPA over the introduction of the D&GP. The procedures in force at the time of the dismissals in July 2001 had been in force since approximately June 1997. Between 1997 and 2001 there were approximately 20 cases dealt with under the provisions of the D&GP. I was indirectly involved in many of these cases and I was directly involved with 6 cases under the procedure in the form of acting as a work colleague as provided for in the procedures. I believe it would be fair to say that in all of those cases the CPA managers were meticulous in observing the D&GP in cases involving discipline. During the relevant period I do not believe there were any cases involving termination of employment of a pilot which did not involve either long term illness or the application of the D&GP. Indeed, in several conversations with management personnel during my time as President of the HKAOA and subsequently, it had been said to me by those individuals that they considered the introduction of the D&GP to have been a good thing and that it was an effective means of regularising relations between pilots and management in such situations. In all the D&GP appeals cases in which I was directly involved, the penalty imposed after the initial hearing was either reduced or the pilot exonerated of all charges on each occasion.

12. In relation to the dismissal of the 49ers which took effect on 10th July 2001, no disciplinary procedure of any sort was followed. The first indication that I and the other 48 pilots received was when we received the letter from CPA. We had not been told that our

records were being reviewed or that there was any consideration being given to the termination of our employment.

13. Following the dismissals, First Officer Evan Summerfield wrote to Bob Nipperess who was the Employee Services Manager for CPA to request that CPA travel benefits to be extended to his nominated colleague, Captain Bradford Harris, as provided for in the terms of the travel policy (page). Captain Harris was one of the 49ers. In rejecting the application Mr Nipperess stated that, “... *the rules of the travel policy state that an employee who has been terminated for misconduct is not entitled to travel benefits*” (page). It is plain from this letter and from a similar letter sent to Miss Mayumi Tsuchiya, who had similarly applied for CPA staff travel benefits to be extended to her partner, another 49er, that CPA’s view at this time was that the terminations had been by reason of misconduct.
14. Subsequently in correspondence with myself and other 49ers, and in correspondence with the HKAOA’s solicitors in Hong Kong Messrs Haldanes, CPA’s stated position changed again and became that the dismissals were neither as a result of any particular offence nor as a result of any misconduct or breach of contract by any of the 49ers, either actual or alleged.
15. In further comments, depositions, affidavits and statements sworn under oath, CPA representatives have told various other different stories.
16. Mr. Barley, Director Flight Operations for CPA as at 9th July 2001, made an Affidavit dated 29th October 2001 in legal proceedings instituted in Hong Kong (page). In paragraphs 15 and 17 of

that Affidavit, Mr. Barley stated that, *“it was as a consequence of the industrial action that CPA and Veta undertook an assessment of all aircrew officers; and that where such officers work strictly within the express terms of their contractual obligations it is not in the airline’s best interests and can indicate an attitude towards the airline which the management is entitled to consider less than helpful, less than valuable and less than worthy of a continuing or long term relationship with the airline.”*

17. In related legal proceedings in the United States, lawyers for CPA stated on their behalf that *“the nine Plaintiffs in this case are part of a group of fifty-one (51) pilots terminated by [CPA] in July 2001 as a result of and in response to industrial action by the pilots’ union ...”*. This statement was made in a Memorandum in support of CPA’s Motion to Dismiss or Stay the United States proceedings (page).

18. In the same proceedings in the United States, Mr. Barley made a Declaration dated 7th December 2001 on behalf of CPA in which he stated (paragraphs 6 and 7) that, *“...as a consequence of HKAOA’s limited industrial action, CPA and Veta undertook an assessment of all their aircrew and identified 51 pilots for termination because they were not working in the interests of CPA”* (page). Mr. Barley also stated (paragraph J on page 7) that, *“...the dispute at the core of the United States proceedings revolved around the HKAOA’s industrial action and CPA’s response to it.”*

19. On 9th July 2001, in a speech referred to earlier, Mr. Tyler also stated that,

“Thus, today, we have issued letters of termination to these pilots. In accordance with their Conditions of Service and the Employment Ordinance the pilots will all receive three months wages in lieu of notice. Those affected include 23 Captains and 26 First Officers. The

average years of service of these Officers are 8 years, ranging from 18 months to 22 years.”

20. On 10th July 2001, an article appeared in the South China Morning Post under the headline “Union outrage after Cathay sacks 49 pilots” (page). The article repeated comments made by Mr. Tyler in his speech made the previous day and also contained the following:-

“Asked for examples of what pilots had done to warrant sacking, [Mr. Tyler] said one had repeatedly verbally abused ground staff while another had called in sick at short notice five times in six months”.

21. Also on 10th July 2001, an article appeared in the Hong Kong iMail under the headline “Cathay draws line with sackings”. (page). This article also repeated some of the comments made by Mr. Tyler and included the following:-

“Philip Chen Nan-lok, a Cathay Pacific director and chief operating officer, announced the sackings, saying it was a tough decision. “We cannot allow this group to disrupt the airline, its employees, our customers or the reputation of Hong Kong. Nor can we allow this group to let the much larger numbers of our flight crews who are showing the total professionalism we require – suffer”, he said. Tony Tyler, Cathay Pacific’s Director of Corporate Development, explained the dismissals were the result of a review of pilots’ records begun “a few days ago when the union made it clear, it was going to escalate industrial action””.

22. As can be seen, CPA representatives have put forward various different conflicting and contradictory stories of the reasons for the dismissals. In response to one letter, in attempting to justify CPA’s disregard for the D&GP, Mr. Barley went so far as to state that the pilots “*were not dismissed for any misconduct or breach of contract*

nor any alleged misconduct or breach of contract' (page).
My own view is that the reason for the dismissals was as a response to the vote by the Membership of the HKAOA to institute a policy of limited industrial action, even though such action, to the best of my knowledge, was not actually implemented. George Crofts himself did not in fact take part in any form of industrial action, I believe because he was not rostered to work on the relevant days between the vote being taken and the date of his dismissal..

I believe that the facts stated in this witness statement are true.

Signed.....
JOHN SIMPSON WARHAM

Dated.....