

Friday, 9 October 2009

(10.03 am)

HIS LORDSHIP: Mr Grossman.

MR GROSSMAN: Good morning, my Lord. I call Mr Dickie.

HIS LORDSHIP: Just one or two things. There are two new witness statements, one by Mr Tyler and one by Mr Chen. You have no objections to those?

MR GROSSMAN: No.

HIS LORDSHIP: There are a number of signed witness statements, one by Mr Fitz-Costa dated 7 October, and one just now by Mr Dickie dated 8 October. I think those are just signed copies of statements that have previously made their way into the bundle.

MR GROSSMAN: That is correct, my Lord. You will understand that when we got the defendants' witness statements rather late, we were taking instructions from around the world, that's really the only reason.

HIS LORDSHIP: They were not available just to sign them immediately.

MR GROSSMAN: Yes. In fact I know Mr Dickie signed his last night.

HIS LORDSHIP: But those were made available to the defendants a few days ago?

MR GROSSMAN: Yes. There is nothing different.

HIS LORDSHIP: Thank you very much, Mr Grossman.

1 MR GROSSMAN: Just on the first point, I would of course
2 like to know as soon as possible if there are going to
3 be any other defence witnesses.

4 HIS LORDSHIP: At the moment, we assume that's it,
5 Mr Grossman. There is your application, foreshadowed
6 application in relation to Captain Barley, we have
7 discussed that previously, and if you don't come up with
8 your application, it looks like that's going to be it
9 for the defendants.

10 MR GROSSMAN: May I say, I'm not going to come up with my
11 application.

12 HIS LORDSHIP: In thinking about the defendants' witness
13 statements and their cross-examination, Mr Grossman, you
14 might just ask yourself whether a number of defendants,
15 you really need to cross-examine them, because in some
16 cases the evidence may be uncontroversial and not really
17 get you one way or the other, or get Mr Huggins one way
18 or the other. It is just, to use your own words,
19 Mr Grossman, to put things into context.

20 MR GROSSMAN: Yes. Thank you, my Lord. I will certainly
21 consider that. Thank you very much.

22 Mr Dickie.

23 MR JOHN WALLACE DICKIE (sworn)

24 Examination-in-chief by MR GROSSMAN

25 MR GROSSMAN: Mr Dickie, you have made three statements.

1 I wonder if you would be kind enough, please, to look in
2 bundle IV, which will be shown to you. Would you look,
3 please, first of all at page 1257. Look up to
4 page 1269; I think this is your statement. You don't
5 have to go through it; just check quickly it's your
6 signature at the end of it.

7 A. That is my signature, yes.

8 Q. Then at the next page, 1270, you have made
9 a supplemental statement. That goes through to
10 page 1281. I think it's at the end of that little
11 bundle there, going up to the red insert. Just confirm
12 that's your statement also.

13 A. That is my statement; that is my signature.

14 Q. Look, please, at page 1330-27, because there are quite a
15 lot under that number, to page 1330-36. Do you confirm
16 that's your statement? I think the one in front of you
17 is not signed.

18 A. Yes, there's one that's not signed.

19 Q. I think you signed the original last night.

20 A. Yes, I did. This is my statement.

21 Q. Do you adhere to those statements?

22 A. Yes, I do.

23 Q. Do you adopt them as your evidence-in-chief?

24 A. Yes, I do.

25 Q. Just one question: just confirm you have not been in

1 court while the other witnesses have been giving
2 evidence.

3 A. No. I arrived in Hong Kong from London on Wednesday.

4 MR GROSSMAN: Thank you very much.

5 HIS LORDSHIP: Mr Huggins.

6 Cross-examination by MR HUGGINS

7 MR HUGGINS: Mr Dickie, can I begin, please, with asking you
8 a number of questions about what happened after your
9 dismissal, before I have to come back and go through the
10 task which I have had to go through with everybody else.

11 A. Certainly.

12 Q. In your evidence in the form of the witness statements,
13 you have told us that you have lost long-term friends as
14 a result of your dismissal from Cathay.

15 A. That's correct.

16 Q. You haven't actually identified any of those friends, so
17 we haven't been in a position to approach them ourselves
18 to see what they have to say about that. Can you just
19 tell me who it is that you say --

20 A. A very long-term friend of mine from my flying school
21 days called John Nordern, who I have known from my early
22 20s and his wife Janet, who told me bluntly to grow up
23 and move on.

24 Q. Anyone else?

25 A. No. Those are the two.

1 Q. I think you have told us in your statements that you
2 felt unable to seek any full-time employment for about
3 a year?

4 A. I was off work for about a year, but I remained in
5 Hong Kong for about six months after the event.

6 Q. I think at one part of your statement you explain to us
7 that you had a year off without seeking employment, and
8 you said that after you had had that year off, there was
9 what you described as the fallout from the terrorist
10 attacks in New York on September 11th. Do you remember
11 telling us something about that?

12 A. Yes. The airline industry was having a little bit of
13 turmoil in September 2001. But by the time I sought
14 employment again, in the spring of 2002, recruitment was
15 on at full pelt again.

16 Q. In fact, in 2002, you would have been able, would you
17 not, to have got a job with China Airlines, along
18 with -- well, you could have applied, anyway, to China
19 Airlines, where Mr Fitz-Costa, Mr Shaw,
20 Mr Blakeney-Williams, Mr Gage, Mr Young, Mr Keene and
21 Mr Carver were all offered jobs by China Airlines. Did
22 you apply to them?

23 A. No, I didn't.

24 Q. Was there any reason for that?

25 A. I applied to Easyjet, to remain in the United Kingdom.

1 Q. But it was an option open to you if you had wanted.

2 Would you have got more money with China Airlines, do
3 you think?

4 A. I probably would have done, yes, but the job with
5 China Airlines was a contract job and the job with
6 Easyjet was full-time employment.

7 HIS LORDSHIP: Could you amplify what you mean by "contract
8 job"?

9 A. They give you a job for -- maybe three-year contract to
10 be renewed. It may not be renewed. My contract with
11 Easyjet is until retirement, at 65.

12 MR HUGGINS: Having obtained that job in the UK, which
13 seemed to have been attractive enough for you, did you
14 apply to people like Air New Zealand, where
15 Mr Blakeney-Williams also got a job?

16 A. No, I remain with Easyjet to this day.

17 Q. And you didn't apply to SIA Cargo?

18 A. No.

19 Q. Or Qatar?

20 A. No.

21 Q. Or Nippon Cargo Airlines?

22 A. No.

23 Q. Or Korean Airlines?

24 A. No.

25 Q. Orient Thai?

1 A. No.

2 HIS LORDSHIP: I think the idea, Mr Huggins, is he didn't
3 apply to anyone else because he was satisfied with what
4 he had at Easyjet.

5 MR HUGGINS: Thank you, my Lord.

6 Having done that exercise, can I come back and do
7 what I'm afraid I have to do with everybody, Mr Dickie,
8 and I hope it won't take too long. Can I ask you,
9 please, to go to bundle X, page 101.

10 Before I ask you specific questions about these
11 documents, can I just ask you whether you became
12 a member of the union in March 1999?

13 A. It was around about that date. I can't remember the
14 exact date.

15 Q. Now, I've been asking them -- it was simply a request,
16 which they haven't been able to get around at the
17 moment -- to provide me with documents in relation to
18 the contract compliance campaign prior to the one we see
19 identified at page 101.

20 Can I just first of all see whether you can help us.
21 If you look at page 101, you will see a reference to
22 an original motion. The union is reminding its members
23 of a resolution on the contract compliance. Do you see
24 that, under the heading "The Original Motion"?

25 A. Yes. Got that.

1 Q. If you go to item 3:

2 "This resolution is to become effective on 11 July
3 2000, and remain in effect until rescinded by the
4 membership."

5 A. Yes.

6 Q. Now, this particular one, therefore, we can see was
7 coming in to play on 11 July 2000. Can you recall
8 whether, when you joined the union in 1999, I think it
9 was March 1999, at that stage there had been
10 a suspension of a previous contract compliance campaign
11 and then it was renewed, revived, in July 2000? Are
12 you --

13 A. I can't confirm that because prior to joining in 1999
14 I wasn't following what the union was doing.

15 Q. Yes, obviously not prior to that, but when you came in
16 in March 1999, do you recall whether there was
17 a contract compliance campaign in force at that time?

18 A. As it's ten years ago, I can't recall.

19 Q. You can't recall. Thank you very much.

20 HIS LORDSHIP: You put a very specific case, Mr Huggins.

21 You say it was suspended and then revived, I think that
22 was the implication, by this resolution.

23 MR HUGGINS: My Lord --

24 HIS LORDSHIP: Let me just finish my question, Mr Huggins.

25 Therefore, is it your case that whatever was the

1 contract compliance campaign beforehand, it was
2 suspended and then revived in 2000, or you're saying
3 you're not sure?

4 MR HUGGINS: My Lord, I'm not sure, and this is being
5 further investigated. I know that your Lordship doesn't
6 want me to take a lot of time about it, because you
7 thought it might not be helpful, and it may not, and
8 I don't want to take up time about it. We are trying to
9 find out ourselves, and I've sent my people off to see
10 whether they have anything that can help.

11 HIS LORDSHIP: Because previously the suggestion being made
12 I think by Mr Fitz-Costa, and I think Mr Heron, was that
13 something was going on from 1993, or at least 1998
14 onwards and there was not necessarily a suspension.

15 MR HUGGINS: It may or may not help your Lordship for me to
16 indicate my tentative understanding at the moment, but
17 it's an understanding that needs to be confirmed by
18 documents before I am satisfied to put it before the
19 court.

20 But my understanding is that prior to 2000, when
21 certain negotiations had been successful with the
22 management, the previous campaign was suspended, and
23 then it was revived again when the union was not
24 satisfied with the way management were behaving.

25 I need that to be confirmed by documentation, which

1 we will try to get if they are not going to provide it
2 to me.

3 HIS LORDSHIP: Thank you.

4 MR GROSSMAN: I am sorry, is it suggested that we should
5 provide it?

6 MR HUGGINS: It was a request, one which I know Mr Grossman
7 has many things on his plate and I'm not criticising him
8 for one moment for not having fulfilled that request.

9 HIS LORDSHIP: It is just a request, Mr Grossman. We are
10 not yet sure what the relevance is.

11 MR GROSSMAN: It is perhaps worth reminding the court, none
12 of these documents are ours. We are not employed by
13 Cathay Pacific. We can't find out these things.

14 HIS LORDSHIP: It's just a request, Mr Grossman. If you
15 don't have the documents, just say you don't have the
16 documents. It's not difficult.

17 MR GROSSMAN: I'm not angry, I'm just saying.

18 HIS LORDSHIP: Thank you.

19 MR HUGGINS: In any event, Mr Dickie -- I'm sorry for that
20 little discursus -- let's come back to what you can help
21 us with.

22 In 2000, when you were a member, I hope this reminds
23 you that there was a resolution which became effective
24 in July 2000, to have a contract compliance campaign; do
25 you recall that now?

1 A. I do recall it. You have brought it back to my memory.

2 Q. I think you have told us in your statements that having
3 become a member, you knew of the disputes between the
4 union and the airline.

5 A. Correct.

6 Q. And supported the union in its dispute with
7 management --

8 A. Yes, I did. Yes.

9 Q. -- with regard to rostering and contract entitlements?

10 A. Correct.

11 Q. Also, in fact I think you added in relation to the
12 union's stance against the AMP, the attendance
13 management programme; do you remember saying that or
14 not?

15 A. No, I don't remember that.

16 Q. What was your attitude in relation to that? Did you
17 have a feeling one way or another?

18 A. No.

19 Q. Let's put that aside then and focus on the things you
20 have told us about. You were in support of the union
21 certainly in relation to rostering and contract
22 entitlements?

23 A. That's right.

24 Q. Do you remember voting in favour of this resolution?

25 A. I don't remember being at the meeting but I did -- I am

1 sure I did vote in favour, but it's a long time ago.

2 I can't confirm it.

3 Q. I appreciate that. And what was your understanding, in
4 a nutshell, as to what contract compliance was all
5 about, that was going to be effective from 11 July 2000?

6 A. The contract is signed by two parties, by the employee
7 and by the company. Both parties must maintain contract
8 compliance, in the sense that for us, to run our
9 contract, the management of Cathay Pacific should have
10 played their part. So it was a two-way process.

11 Q. Certainly I can understand that in relation to your
12 contract between yourself and the employer, but I'm
13 trying to understand what the nature of the campaign
14 was, what's becoming effective on 11 July?

15 A. The problem at the time was that there were not enough
16 pilots employed by Cathay Pacific to do the task, and as
17 a result there was a lot of pressure put on the crews
18 that were employed to try and fulfil a task that was
19 difficult. By doing contract compliance, we were
20 highlighting this issue and simply doing the contract
21 that I had signed. So --

22 Q. Where I am finding it difficult, and I'm sure it is my
23 fault, in understanding what is actually kicking in on
24 11 July 2000, according to this document -- what's the
25 difference?

1 A. The process, a long drawn-out process, to try to
2 persuade the management of Cathay Pacific to come to
3 come to our representatives, to start sorting out what
4 was an incredible mess in the running of the company.

5 Q. But how did you perceive that was going to happen by the
6 use of this particular resolution?

7 A. Because if we just stuck with our contract and didn't do
8 over and above the contract, they would have a problem,
9 because they just simply didn't have enough crews. In
10 other words, if you didn't work on days off, which we
11 were quite entitled to, and you needed your rest, there
12 would be a problem, and maybe this might help to sort it
13 all out.

14 Q. It may shorten all of this and may make me go away, to
15 a certain extent, if we encapsulate it the way
16 his Lordship did with Mr Shaw. Is it your position that
17 essentially it was a question of -- withdrawal of
18 goodwill was the expression Mr Shaw was --

19 A. That is a very good way of describing it.

20 HIS LORDSHIP: It was not Mr Shaw; it was Mr Wilson.

21 MR HUGGINS: It was Mr Wilson.

22 A. Yes, withdrawal of goodwill.

23 Q. In that case, this position as on page 102, do you see
24 the "Beyond the Motion" material begins at the bottom of
25 page 101, that crew should be aware of and are generally

1 encouraged to comply with a number of things.

2 Was it your understanding that what the union was
3 trying to say to its members was, "Look, the key to this
4 campaign" -- or one of the keys to the campaign at any
5 event -- "is contactability; don't make yourself
6 contactable by these wretched people who are exploiting
7 you or asking you to do more than your contract
8 requires", as you saw it? Is that the sort of thing
9 that you understood was going on?

10 A. I regard this document as just a little piece in the
11 jigsaw, adding pressure to Cathay Pacific management to
12 come and talk to our representatives, to try and sort
13 all of this out. I don't regard it as a document that
14 I must follow word for word and obey.

15 Q. Well, certainly the spirit of it, as far as possible?

16 A. The spirit of it is basically, as you just mentioned
17 previously, withdrawal of co-operation, of goodwill.

18 Q. So that whereas, previously, you might have done what
19 you regarded as a favour to the airline, you weren't
20 going to do that anymore, as long as the campaign is
21 going on, that sort of thing?

22 A. I also felt, because of what had been going on, that
23 this was the way to behave now, that we should withdraw
24 our co-operation, because the mess was just dragging on
25 and on and on.

1 Q. Sorry, when you said you also thought, was that
2 agreeing --

3 A. My own personal view was that withdrawal of goodwill was
4 a good idea.

5 Q. And what form did you think the pressure was going to
6 take? Or put it another way, what consequences did you
7 think would there be, hopefully, to this campaign?

8 A. Maybe they might just sit down and say, "Let's sort this
9 out, guys."

10 Q. Again, why would they do that? What would be the form
11 of pressure on them?

12 A. The problem -- and I'm not speaking for them in this,
13 this is a personal view --

14 Q. Yes, that is what I am interested in.

15 A. -- is that the airline wasn't running smoothly at all
16 and it surely would be in the management's interest of
17 the airline to smooth out its operation.

18 Q. What else did you think it would achieve, apart from
19 putting pressure on the management?

20 A. That's what I thought it would achieve.

21 Q. I suppose one other benefit might be that if you and the
22 other members weren't contactable in the way you might
23 previously have been, you would not be pestered on
24 things like guaranteed days off and that sort of thing?

25 A. Well, your guaranteed days off were very important rest

1 time for you. So there is a facet with this. The
2 operation was so unstable, roster-wise, that your rest
3 was very important, and you had to do -- under the Air
4 Navigation Order, pilots must be rested when they go to
5 work, so having time off away from work, not thinking
6 about work, is very important.

7 Q. Could you help me by going to page 116, Mr Dickie. If
8 you go to the bottom right-hand corner, 20 October 2000,
9 here is a letter to the members, "Contract Compliance
10 Update", and the union is saying, "Is contract
11 compliance working?" Do you see that, just under the
12 main heading? Answer, rhetorically, "Yes". "How do we
13 know?", a rhetorical question, followed by:

14 "The association office and your committee receive
15 daily reports and proof, including examples of:

16 Extensive delays.

17 Flight cancellations, diversions", and so on and so
18 forth. All of that sort of stuff you can read there.

19 Were you generally aware that this is what the union
20 was saying to you was the effectiveness of the campaign?

21 A. I don't remember this document.

22 Q. I think if had focused on the form of the question, you
23 might have noticed that I was trying to not pin you down
24 to any particular document. I am more interested in
25 your understanding, however it arrived to you, that this

1 was the understanding that the union was telling its
2 members was the effect.

3 A. Could you repeat that question, please?

4 Q. Yes. Forgive me if it was a clumsy one.

5 A. I'm not quite sure what you're after here.

6 Q. Don't worry about what I am after because counsel often
7 may ask questions which turn out to be of absolutely no
8 help at all, and his Lordship in due course will
9 probably tell me that. At the moment I am just trying
10 to understand your state of mind in relation to all of
11 this.

12 Here is but an example of a number of documents
13 I could show you, where from time to time, in fact quite
14 regularly, the union told its members as to the
15 effectiveness of the campaign, and this is but one
16 example.

17 Now, looking at it, you can't recall, can you,
18 seeing that document?

19 A. I don't remember it, no.

20 Q. We can look at other ones, but before I -- I'm not
21 trying to pin you down to anything but I am just trying
22 to ask you: the reality must be, mustn't it, that you
23 had an understanding, from one or other of these
24 documents or from what they were telling their members,
25 that this was the effect of the campaign?

1 A. I was simply, at this stage, leaving the running of the
2 campaign to elected representatives and flying the
3 aircraft to my best professional standard. I wasn't
4 involved actively in day-to-day thinking about this or
5 that.

6 Q. But you must surely have been, on your own evidence,
7 very concerned about the deleterious effects the
8 management's attitude, as you saw it, was having on your
9 own operating as a pilot: fatigue, stress and all of
10 rest of it?

11 A. Yes, but I did my very best to counteract that.

12 Q. But you also, hopefully, as a union member, were trying
13 to do your best to put a stop to all that, to get the
14 union to negotiate properly with management by
15 pressurising them to come back; was that the position?

16 A. That is what I hoped the union was doing, yes.

17 Q. So you would have been interested, would you not --
18 I think it stands to reason but by all means let's hear
19 what you say --

20 A. Yes, interested in the sense that you might have a chat
21 in a bar about how things were going.

22 Q. Rather than more than that -- well, let's take that as
23 an example. What sort of understanding did you have as
24 to whether this business was working or not, this
25 campaign?

1 A. It didn't seem to be having the desired effect.

2 Q. Why do you say that?

3 A. Because there didn't seem to be any meaningful
4 negotiations going on to sort the problems out.

5 Q. Yes, but sometimes it takes a wee bit of time for the
6 pressure to work, doesn't it?

7 A. It should, yes.

8 Q. It should?

9 A. Yes, well, the pressure -- yes, it does take time, you
10 are quite right.

11 Q. But the interest you would have had was to see whether
12 it was having any kind of pressure, were you getting any
13 closing to getting these people to come to the table,
14 surely?

15 A. I was a fairly passive member of the AOA, I would have
16 to admit, and I was leaving it to our representatives,
17 and just getting on with my daily life and doing my job.
18 It wasn't a thing that I thought about every morning and
19 every evening.

20 MR HUGGINS: I don't think I put that to you, did I? I'm
21 simply trying to understand --

22 HIS LORDSHIP: It's not quite clear what you are putting,
23 Mr Huggins.

24 MR HUGGINS: As your Lordship pleases.

25 I am suggesting to you that announcements of this

1 kind -- and I am more than happy to look at others --
2 would have got through to you as being what the union
3 was telling you and its members was the gradual increase
4 of pressure on the management and the increasing
5 effectiveness of the campaign. That's all.

6 A. I left the union to run the campaign. I would read this
7 and probably throw it in the bin at the end of it.

8 Q. I beg your pardon?

9 A. I would have read the document, more than likely, and
10 put it in the bin or stored it away.

11 Q. But having either put it in the bin or stored it away --
12 you have no recollection of either of those things?

13 A. I do not have a copy of this.

14 Q. You would have, however, presumably, since you said you
15 binned it after or stored it away -- would you at least
16 have got some flavour of what the union was saying?

17 A. I can't recall all the documents that came through from
18 the union and whether or not I actually received them
19 all or whether I read them all. We are going back here
20 nine years.

21 Q. But would you not accept that reading any of these --
22 I will read you a few more to see whether it prompts
23 a recollection. I am trying to shorten it. I am trying
24 to suggest to you that anyone seeing any of these
25 documents must have seen the connection, as far as the

1 union was concerned, between the campaign and some
2 pressure having some effect on the airline. Are you
3 really going to stick on that?

4 A. I hoped that the campaign was having some effect. We
5 all did.

6 HIS LORDSHIP: I think what you're saying, Mr Dickie, is
7 this. From your point of view, from the very beginning,
8 before the campaign, Cathay Pacific management couldn't
9 properly run the airline without a huge measure of
10 goodwill from the pilots --

11 A. That's correct.

12 HIS LORDSHIP: -- because they weren't hiring more pilots,
13 they weren't expending the resources that you thought,
14 or others may have thought, ought to have been spent.

15 A. That is correct.

16 HIS LORDSHIP: So if you withdraw that goodwill, that's what
17 you said, to your mind the contract compliance campaign
18 might be categorised as a withdrawal of goodwill, if
19 your premise is right that without that goodwill Cathay
20 couldn't run the airline, then it inevitably must
21 follow, if you have the contract compliance, withdrawing
22 your goodwill, Cathay would be increasingly finding it
23 difficult to run the airline properly?

24 A. That's correct.

25 HIS LORDSHIP: There would be rostering instability and so

1 on, because from your point of view it's understaffed,
2 under-resourced?

3 A. That's correct.

4 HIS LORDSHIP: I think all Mr Huggins is suggesting is that
5 from time to time, at the bar, perhaps through union
6 newsletters, you would be hearing about the effects of
7 the contract compliance campaign. To your mind that
8 would really be, "Well, this is really showing Cathay,
9 the management, that they are understaffed,
10 under-resourced, relying too much on our goodwill and as
11 a result we are getting too tired, fatigued, and we are
12 not able, ourselves, to function as well as we ought to
13 be functioning" -- was that the sort of thinking you
14 had?

15 A. That's exactly the thinking, my Lord.

16 HIS LORDSHIP: And was that the sort of awareness you had?

17 A. That's the level of awareness I had.

18 HIS LORDSHIP: When you say -- well, Mr Huggins says it may
19 take "a wee bit of time", I think Mr Huggins would put
20 it, before the pressure began to be felt -- would there
21 be sort of disappointment in your mind, that maybe it
22 has taken quite a bit of time, contract compliance has
23 been running for months, but the management doesn't seem
24 to be acknowledging that they are under-resourced and
25 understaffed?

1 A. Yes. I mean, it would have been lovely from our point
2 of view if it was sorted and the airline went back to
3 the great operation it was before.

4 HIS LORDSHIP: Just one more question before I give it back
5 to Mr Huggins. You say you envisaged Cathay coming
6 back, management coming back, to the negotiating table.
7 What exactly would they be negotiating about, because
8 from your point of view the problem is lack of
9 resources, lack of manpower. You're saying to Cathay,
10 "You should be hiring more people." What's there to be
11 negotiate about that?

12 A. Well, our recognition that there was lack of resources.
13 The problem would be partially solved by at least more
14 crews being hired. In the meantime let's work together
15 to sort it out while more crews are being hired.

16 HIS LORDSHIP: Did you have any idea how it might be sorted
17 out pending hiring of more crew, putting in more
18 resources?

19 A. No. I would leave that up to our AOA representatives to
20 try and --

21 HIS LORDSHIP: You would leave that up to the union?

22 A. To the union.

23 HIS LORDSHIP: You were more a passive member?

24 A. Yes, I was.

25 HIS LORDSHIP: Sorry to have interrupted, Mr Huggins.

1 MR HUGGINS: Let me try and press on, get through the
2 documents I feel I have to put to you and then sit down.

3 Mr Dickie, page 136, will you look at fairly
4 quickly. "Contract Compliance" again, would you focus
5 on that, and the heading "CC", that's contract
6 compliance, "Effectiveness":

7 "Contract compliance continues to increase in its
8 effectiveness as reserves are exhausted and the
9 management's options wither. Multiple cancellations and
10 extensive delays continue to increase on a weekly
11 basis."

12 That sort of announcement, this was the sort of
13 encouragement, perhaps is the way you would put it, from
14 your union that this was -- "It is working, chaps, but
15 you may have to be patient", that sort of effect; do you
16 agree?

17 A. Yes.

18 Q. Then can I move on to page 160, the right-hand column,
19 there's a reference to a thing called the focus
20 discussions. Did you go to any of the focus
21 discussions?

22 A. I don't recall doing that, no.

23 Q. Do you think you might have done?

24 A. I may have gone to one or two.

25 Q. Let's just see whether this prompts any recollection,

1 and I promise not to take long:

2 "The focus discussions were another clear indication
3 that the membership want to apply further pressure in
4 the near future to encourage management to meet our
5 financial needs. In other words, we may have to cross
6 the boundary between simple contract compliance and
7 limited industrial action."

8 Do you see that?

9 A. Yes, I do.

10 Q. Do you think you might have seen that or heard about
11 that at the time?

12 A. I don't recall seeing this before.

13 Q. Then let's try the other part of the question. Sorry to
14 roll two up in one. Let me break it down. Do you think
15 that at least was your understanding around that time,
16 from what you heard?

17 A. It probably was my understanding, but I don't recall.

18 As I have said before, it's nine years ago.

19 Q. I quite understand that. Can we move then to --

20 HIS LORDSHIP: Perhaps I can just ask one question there.

21 MR HUGGINS: Of course, my Lord.

22 HIS LORDSHIP: Reference is made to "the membership want to
23 apply further pressure in the near future to encourage
24 management to meet our financial needs."

25 At the moment you have been talking about it being

1 a question of getting Cathay to recognise that it's
2 under-resourced, it needs more manpower, it needs more
3 investment into the business. But this refers more
4 specifically to "meeting our", that is the pilots',
5 financial needs. How did you see that featuring in?

6 A. I don't think there were any financial needs at the
7 time. There were certainly no paid amounts on. So I'm
8 not sure what that means.

9 HIS LORDSHIP: Thank you.

10 MR HUGGINS: You will have to help me with that, because, as
11 I understood your evidence and your witness statements,
12 you were supporting the union in its disputes with the
13 management over not only rostering but contractual
14 entitlements. Were those not financial? Wasn't that
15 one of the things that they were disputing?

16 A. I don't think at the time it was anything to do with
17 financial in terms of cash. I can't remember exactly
18 what the contractual problem -- it was probably
19 contractual abuses by management, more than us requiring
20 or wanting anything more.

21 Q. On what basis do you say that that was more probable?
22 After all, it's your statement which referred to two
23 aspects: one, rostering, and the other, contractual
24 entitlements. When you made that statement -- it's your
25 statement --

1 HIS LORDSHIP: Contractual entitlements might mean
2 guaranteed days off are sacrosanct, for instance.

3 A. Yes. At the time, our contracts were being eroded by
4 management and we were trying to basically hold on to
5 what we had.

6 HIS LORDSHIP: Just to press you a little bit on that,
7 Mr Dickie, because reading all these newsletters one
8 gets the impression that the pilots were also worried
9 about their pensions, life after Cathay, life after
10 retirement. There's a lot of material there about,
11 "Have you realised how expensive it is, living in
12 retirement?" And there seems to be the message that
13 maybe one could improve upon one's pension, one's
14 pension rights and one's retirement benefits, and so on.

15 Might those be the financial needs that you were
16 also requiring Cathay to come to the negotiating table
17 about?

18 A. Very probably, my Lord, yes.

19 HIS LORDSHIP: Right. Mr Huggins?

20 MR HUGGINS: Page 178, Mr Dickie. Pages 178 and 179.

21 "Contract Compliance -- 45/80/120":

22 "Contract compliance is definitely working" --
23 another announcement to that effect -- "but it can
24 always work better. Ask yourself if you are rigidly
25 adhering to these numbers each and every time they are

1 applicable."

2 It is obvious from the context that the numbers they
3 are talking about are 45, 80 and 120, all of which are
4 minutes.

5 I see you reading to yourself. That might be the
6 quickest way of doing it. Can you just read what it
7 says in relation to 45, 80 and 120, and then tell me
8 when you are ready.

9 A. Yes. Go ahead.

10 Q. I just really have one point, for what it may or may not
11 be worth. You can see from the terms of a document like
12 that that your union was urging its members to take the
13 full amount of the contractually allotted time for these
14 various functions. "You're entitled to it under your
15 contract. Take it. Rigidly adhere to it." Was that
16 your understanding?

17 A. That was my understanding, but again it was up to each
18 individual to decide what they did.

19 Q. Certainly you wouldn't want to break line with the
20 union, particularly, when it's encouraging you to do
21 this, would you?

22 A. From my own personal point of view, when I was called
23 out for a duty, I just did the normal thing, got myself
24 changed, went to the airport and did the duty.

25 Q. Were you aware of this aspect of the case?

1 A. I don't remember the document, but I'm sure I did see it
2 at the time.

3 Q. You certainly didn't have any disagreement with it, in
4 principle?

5 A. I regard it as a guide, for people who wish to use it.
6 I personally would not have used it.

7 Q. Would you just help me by jumping back -- I am sorry to
8 jump around -- page 174, just a few pages back, really
9 following up the question that you were talking about --
10 do you see something there in the left-hand column, this
11 is on 9 April, a newsletter talking about salary and
12 benefits:

13 "The bad news is that salary negotiations are not
14 going well. You have read our reasonable position in
15 our 'Money Special' on 1 February."

16 Do you see that?

17 A. Yes.

18 Q. Does that now perhaps help to prompt your recollection
19 that salary and benefits really was something that was
20 of concern at that time?

21 A. I don't have any recollection of that. This may have
22 been negotiations for the more junior pilots on
23 a different contract.

24 Q. Let's have a wee look at page 176, heading "Remuneration
25 and Benefits":

1 "As amplified in the focus nights and in our
2 remuneration and benefits paper, our broad remuneration
3 and benefits aims are ..."

4 Then setting out a number of aims of the union.

5 You would have been aware of that at the time, would
6 you not?

7 A. Probably, yes.

8 Q. Going back to where I was at pages 178 and 179, were you
9 aware in general terms what is specifically set out at
10 the bottom of page 178, that if you don't rigidly adhere
11 to these times, then you're doing two things, from the
12 union's perspective: one, compromising safety, and
13 secondly, weakening contract compliance; were you not
14 aware that, in general terms, was what the union was
15 saying to its members?

16 A. That's the way you can read it, yes.

17 Q. But I am asking you. Is that the way you would have
18 read it?

19 A. I would read it that way, yes.

20 HIS LORDSHIP: You say you treated it just as a guide?

21 A. As a guide. All part of incremental pressure, my Lord.

22 HIS LORDSHIP: You were urged, in other words, rigidly to
23 adhere, but you didn't necessarily rigidly adhere?

24 A. I most certainly didn't rigidly adhere, my Lord.

25 HIS LORDSHIP: You went on your own business in the way you

1 saw fit.

2 A. When I fly the aeroplane I act as a professional airline
3 captain, I do -- that's for the safety reasons.

4 MR HUGGINS: Forgive me, I want to make sure there was not
5 something I missed in that last answer. You're not
6 suggesting, are you, that you regarded your union's
7 campaign as in any way irresponsible?

8 A. No, not irresponsible in the slightest, but the way
9 I regard this is as a guide, a pressure by our
10 representatives.

11 Q. In fact, on the contrary, I think it would be fair to
12 say that you regarded it from your perspective as
13 a perfectly responsible way of getting these management,
14 who were not being satisfactory, to come back to the
15 table?

16 A. If they read this document and decided to talk, that
17 would be very good.

18 Q. Can I move to pages 196 and 197 -- I promise to try and
19 get through this as quickly as I can.

20 HIS LORDSHIP: Page 196, you say?

21 MR HUGGINS: Yes, 196. I am so sorry.

22 This is referring to an upcoming meeting on 20 June,
23 an extraordinary general meeting, and it's actually
24 a document, if I can help you -- by going to page 198 at
25 the bottom, you will see it was a letter that came out

1 from the president on 16 May. With that letter would
2 have come a proxy, as it says, and an agenda and even
3 a video, but let's not worry about the video now.

4 Let's look at the agenda and proxy which you see
5 actually at pages 194 and 195. We should have put them
6 further back in the bundle but we have put them in
7 front. Do you see, there's the agenda, and over the
8 page the appointment of proxy, if had you wanted to do
9 that. But the agenda for the meeting is at item 2 on
10 page 194. Would you just cast your eye over that.

11 A. Yes.

12 Q. So you would have seen that, that the proposal was that
13 it should be "resolved that, following CPA management's
14 failure to resolve long outstanding issues on rostering,
15 remuneration and benefits, all full members of the Hong
16 Kong Aircrew Officers Association will undertake limited
17 industrial action with effect from 1 July 2001, until
18 further notice."

19 Does this remind you of the resolution?

20 A. Yes, it does.

21 Q. Did you vote at that meeting?

22 A. Well, I either voted there or sent a proxy in.

23 Q. You really can't remember which?

24 A. I can't remember which.

25 Q. Again I will try to prompt your memory in a minute by

1 looking at the documents, but if you can't remember, you
2 can't remember. In any event, either way, you would
3 have supported this?

4 A. Yes.

5 Q. Pages 196 and 197. Page 196 -- do you think it likely
6 that you would have seen what your president is saying
7 before you decided to cast that vote, namely he is
8 setting out, at the start of the letter, his mixed
9 emotions and he's effectively saying "sorry it's come to
10 this but really it's the management's fault and we are
11 driven to it", and he says:

12 "Consequently, we have called an EGM for the
13 following purposes ..."

14 Again, please read those items 1 to 6 to yourself,
15 but I am particularly focusing on number 3, because
16 I want to ask you a question or two about that. Just
17 read it to yourself, 1 to 6.

18 A. I've read it.

19 Q. Item 3, just to get your help, if you would:

20 "Your committee has selected 'limited' industrial
21 action with the aim of increasing the pressure
22 incrementally and only to the minimum amount required to
23 achieve our reasonable objectives."

24 Can you help me with your understanding as to what
25 that was going to be about and its purpose?

1 A. By the time the limited industrial action had come in,
2 I had already been dismissed, therefore I didn't pay any
3 attention.

4 Q. Forgive me, you are rather jumping ahead of things.
5 I am interested at the time when you were voting in
6 relation to the resolution. Can we focus on that?

7 A. This document would have been another facet of the
8 pressure being applied to Cathay Pacific management,
9 saying, "Guys, if you won't come and talk to us, you
10 know, this is coming up next."

11 Q. Again, just so I understand it, we have already had the
12 contract compliance in place; there is now going to be
13 incremental pressure, stepping up of the pressure. That
14 was your understanding from --

15 A. That's how the document reads.

16 Q. That was your understanding?

17 A. That was my understanding.

18 Q. What I am trying to struggle with is what was your
19 understanding as to what sort of form, in whatever
20 general terms, industrial action might take. What did
21 it mean? What was limited --

22 A. We didn't know. We were not told.

23 Q. But you were going to vote for it anyway?

24 A. We were going to vote for the union's representatives to
25 give this mandate, presumably to go to the company, and

1 if it didn't work, they would then tell us what they had
2 in mind and I do not know what they had in mind.

3 Q. And when they were talking about upping the pressure but
4 "only to the minimum amount required to achieve our
5 reasonable objectives", is that their way of saying, as
6 far as you understood it, "Look, chaps, this is going to
7 cause disruption, obviously; we want to keep the
8 disruption to as low a level as possible", something
9 like that?

10 A. No. My understanding of this document is that --
11 because I had no idea what the industrial action plan
12 was -- we did not know, we had not been told -- reading
13 this document, it was just more pressure on the company
14 to talk to us.

15 HIS LORDSHIP: Are you saying that this is sort of
16 a propaganda document, it's meant to be read by the
17 management?

18 A. A little bit of propaganda, yes, management reading it,
19 saying, "It looks like they're going to do some more."

20 HIS LORDSHIP: "So we better go to the table"?

21 A. It might be worth having a chat.

22 HIS LORDSHIP: That sort of thing.

23 A. That sort of thing.

24 MR HUGGINS: If you go to the bottom of page 197 to
25 page 198, at the bottom of page 197:

1 "Your committee has evaluated all options between
2 the boundaries of doing nothing, to embarking on an
3 all-out, indefinite strike. We have concluded that, at
4 this stage, the sensible solution lies somewhere in
5 between. We favour the use of incrementally increasing
6 pressure, thereby minimising disruption to our
7 travelling public, until we achieve our goals."

8 Was that the sort of understanding you had about
9 what they were trying to achieve?

10 A. With the knowledge at the time, yes, I think it was
11 minimum disruption to the public, it's not their fault
12 it was going on, but while trying to achieve our aims,
13 yes.

14 Q. Page 211, please, Mr Dickie. Again, I won't take up too
15 much time on this, but I just want to remind you of the
16 sort of regularity with which notices of this kind were
17 coming from your union. Here on 12 June 2001 -- this is
18 just before the upping of the pressure:

19 "CONTRACT COMPLIANCE.

20 Contract compliance continues to apply added
21 pressure to the commercial operation. Management would
22 love you to believe that it is having no effect, so that
23 you release the pressure. Do not be fooled. If
24 increasing roster instability doesn't convince you,
25 consider the amount of management time and effort spent

1 in efforts to combat contract compliance."

2 Do you see that sort of thing that was still being
3 put out at this stage?

4 A. Yes.

5 Q. So in effect it's saying to its members, "Look, chaps,
6 don't take the pressure off, keep it on, it's having
7 an effect, in two particular respects, increasing roster
8 instability and causing the management to rush around
9 trying to combat all this"; that, in general terms, was
10 your understanding?

11 A. It's my understanding this was an ongoing campaign.

12 Q. I'm sorry to have to do this exercise. I have to do it
13 with everyone.

14 A. That's absolutely fine.

15 Q. Page 217. An open letter from the union to Hong Kong's
16 travelling public, who after all were going to be the
17 ones affected by this. Do you recall this?

18 A. No.

19 Q. Not even in broad terms?

20 A. If I saw this document it, I probably saw it eight years
21 ago.

22 Q. It is only fair to you, then, that we look at it slowly
23 to see whether you can help.

24 15 June:

25 "Ladies and Gentlemen.

1 As professional aircrew of Hong Kong's flag carrier,
2 Cathay Pacific Airways, we regret sincerely the need to
3 take 'limited industrial action' and the inconvenience
4 this will cause to you, our passengers. This motion will
5 be voted on at an [EGM] on 20 June 2001.

6 The issues are complex and the details can be used
7 to confuse or mislead. However, resolutions to the
8 issues have been put off by the Swire Group management
9 at the airline, for many years. An unhelpful approach
10 and a refusal to negotiate constructively has led to
11 this committee proposing the 'limited industrial action'
12 to our members."

13 Does this not prompt a recollection that there was
14 this letter to the public, basically trying to explain
15 to them what was going to happen but that you were going
16 to try and keep it to a minimum?

17 A. I still have no recollection of this letter.

18 Q. Weren't you concerned then at the time at all as to what
19 effect it might have on the travelling public?

20 A. Absolutely.

21 Q. So, although you have no recollection about this letter
22 now --

23 A. I don't have a recollection of this document, but
24 certainly, the travelling -- the operation was in such
25 a state of instability that the travelling public were

1 being disrupted, due to the lack of crews to fly the
2 aeroplanes.

3 Q. Forgive me. I think you may be perhaps making
4 a particular argument, which may or may not be right --
5 it will be for his Lordship to decide -- but I am more
6 focusing on the need felt at the time by the union to
7 put out a document of this kind, an announcement to the
8 public that this limited industrial action was coming
9 and what the effect was going to be: inconvenience to
10 them.

11 A. The committee members of the union would have made the
12 decision to put this letter out.

13 Q. Sure. I'm not in any way holding you responsible for
14 it, I'm just trying to --

15 HIS LORDSHIP: Your question to him was whether he was
16 concerned about disruption to the public.

17 MR HUGGINS: Yes.

18 HIS LORDSHIP: I think he said he was concerned, and in one
19 sense, if I understand his evidence correctly, the
20 reason that the whole campaign is being embarked on is
21 because of that concern.

22 A. That's correct, my Lord.

23 HIS LORDSHIP: Because pilots were getting overly fatigued,
24 because of too much reliance on the goodwill in the
25 past.

1 A. Correct.

2 HIS LORDSHIP: So he thought, rightly or wrongly, that was
3 not a way to run an airline, and so one had to go to
4 contract compliance in order to prove a point to
5 Cathay's management.

6 A. That's correct, my Lord.

7 MR HUGGINS: Now one's going one step up in terms of
8 pressure, and you would have been concerned, wouldn't
9 you, that the travelling public should be given some
10 kind of understanding as to why you were doing this, not
11 just for selfish reasons but because you felt it was
12 necessary.

13 A. The AOA committee obviously made the decision --

14 Q. Sure.

15 A. -- that the travelling public should receive -- that
16 this letter should be published. I didn't make that
17 decision.

18 Q. No. All I am trying to suggest to you, that the
19 inherent probabilities are, that given your own concerns
20 about the effect this might have on the public, you
21 probably would, although it was eight years ago, have
22 been interested in seeing some kind of assurance like
23 this being put out to the public?

24 A. It seem a perfectly reasonable thing to do.

25 Q. And thinking about it, do you not think that the

1 likelihood is that in the normal course of events you
2 would have seen documents of this kind and probably this
3 document?

4 A. I may have see it; I may not. I do not recall it.

5 Q. I will move on, Mr Dickie. May I please, as I have to,
6 just take you to another bundle briefly: bundle IX. We
7 will come back to bundle X in a minute so don't put it
8 too far away, but bundle IX, page 2896.

9 This is the document containing the minutes of that
10 meeting which was held on 20 June, at which the motion
11 was duly proposed, seconded and then passed by a show of
12 hands.

13 I am just interested in seeing, if you look at
14 page 2898, where there's a record of the discussions at
15 the time, whether this might help you recall whether you
16 were there.

17 The president is recorded as having said that the
18 motion was a demonstration of support for the union, and
19 then sets out what the resolution was, then says
20 something about "The facts are simple: we have reached a
21 point where we cannot go on being bullied by management.
22 We have heard all their arguments, they are not running
23 the business the way they should, they are not including
24 the employees, they are not maximising our use", and so
25 on.

1 Do you now recall that possibly you were at this --
2 probably you were at the meeting and heard this sort of
3 talk?

4 A. I may have been. I cannot recall.

5 Q. Really?

6 A. I may have been flying, in which case I wasn't there.

7 Q. Then do you not recall somebody from the floor saying,
8 "Look, there have been a lot of rumours about what
9 limited industrial action is. I'd like to know what it
10 entails." You were interested yourself, weren't you?

11 A. I don't remember that and I never found out what limited
12 action did entail until I had been dismissed.

13 Q. Again I do what I sometimes do and it is distracting for
14 a witness, and I apologise, I have rolled two things
15 into one. You were interested yourself in what limited
16 industrial action that you voted for was going to be?

17 A. But I didn't know what it was.

18 Q. I know. That's just the point I am making to you,
19 Mr Dickie.

20 HIS LORDSHIP: I think implicit in that is that your answer
21 is, "Yes, but I didn't know what it was."

22 A. Yes.

23 HIS LORDSHIP: It could conceivably be, "Yes, I was
24 interested in knowing what it was because I didn't know
25 what it was."

1 MR HUGGINS: My Lord has certainly sorted that out for me.

2 A. It has cleared that one up.

3 Q. Given your helpful answer to his Lordship -- it
4 clarified it for me, at any rate -- yes, you were
5 interested, so where did you take it from there? When
6 did you ever find out what it was?

7 A. On 9 July I had been dismissed. There were higher
8 priorities in my life on 10, 11 and 12 July. As to what
9 limited industrial action was, I was just chatting to
10 people in town, but I didn't take a huge interest in it,
11 because it quite frankly didn't affect me any more.

12 Q. Finally, before I move on and give up on this particular
13 aspect, look at page 2899. At this meeting there's
14 a record of the president saying, "What is limited
15 industrial action?", two-thirds of the way down the
16 page.

17 "This is difficult to answer, like giving your
18 tactics to the other side. Limited industrial action
19 means you work within your contract. I lament the
20 amount of time management has spent fighting the union
21 and its members and the time we have spent trying to
22 hold on. What a waste of time, why not work together
23 and use this time to make this a successful airline? We
24 want to be a part of the business. Vote for the
25 motion."

1 Does this possibly not prompt a recollection that
2 this was just what you understood and probably
3 understood from what he was saying at the time at this
4 meeting?

5 A. It doesn't prompt a recollection, but I fully support
6 what he is trying to achieve with this.

7 Q. Can I then move on. Can we put that away, please, and
8 come back to bundle X, at pages 221 and 222. Again,
9 Mr Dickie, can I just show you that page 222 tells us
10 this was a letter on 20 June, the same day as the vote
11 was passed, and he at page 221 sets out to his members
12 the fact that the vote had been carried by a majority of
13 92 per cent. Do you see that?

14 A. Yes.

15 Q. He goes on to explain the in the second paragraph how
16 "The industrial subcommittee has been working hard to
17 refine a strategy that will maximise pressure on
18 management to address your concerns, while working
19 within the bounds of your contract."

20 Do you think it's likely that you would have seen
21 this?

22 A. Probably at the time, yes.

23 Q. Page 224, an update on 27 June. The penultimate
24 paragraph:

25 "Action. Our strategy is based on continuously

1 increasing the pressure on management in incremental
2 stages. Don't expect them to crumble on the first day.
3 They will almost inevitably try to 'tough it out', or
4 even lash out at us. It will probably take some time
5 before someone high enough up the organisation says,
6 'This is stupid and inefficient. It's also costing us
7 money unnecessarily. Why don't we try and include our
8 pilots in the business instead of trying to wage war on
9 them?'" , and so on, and so forth. Do you think you
10 would have understood that at the time, probably from
11 reading --

12 A. Yes. That sounds simple.

13 Q. Let me move on. I'm getting there. Pages 226, 227
14 and 228. There, again, I will give you the date, it
15 comes out on 29 June. We see that from the bottom of
16 page 228. At the front page there's a heading "Maximum
17 Safety Strategy -- Stage 1". Do you think you would
18 have got this document? After all, you were looking out
19 to find out what the limited industrial action was going
20 to be.

21 A. I may very well have received it. I don't recall. But
22 I'm sure I did.

23 Q. Thanks. In that case I don't need to waste any more
24 time.

25 And you understood now that this was the limited

1 industrial action that they had been talking about?

2 I think that's implicit in what --

3 A. Are you asking me, is MSS and limited industrial action
4 the same thing?

5 Q. I am asking you what you understood this to be when
6 29 June arrived. You had been looking out to find what
7 limited industrial action was going to be. The union
8 had told you that was going to be told to you on
9 the 29th, and here it is, the 29th, out it comes.

10 A. Looks very likely, yes.

11 Q. Can you just help me with what your understanding was at
12 the time of the difference between simple contract
13 compliance and limited industrial action?

14 A. I think both would be the same, wouldn't they?

15 Q. With the second being somehow a higher gear than the
16 first? I am trying to understand in concrete terms how
17 the pressure is added.

18 A. I don't remember how the pressure was added.

19 Q. In any event, you voted in favour of it, and there it
20 was.

21 A. I had confidence in the leadership of the AOA.

22 Q. Mr Dickie, as I said, you will appreciate this is my
23 duty, I have to do this. I am sorry to have taken up
24 your time, I am very grateful to you for having come,
25 and thank you for giving your evidence so clearly.

1 HIS LORDSHIP: Mr Grossman.

2 Re-examination by MR GROSSMAN

3 MR GROSSMAN: Mr Dickie, do you recall, when was your last
4 fly with Cathay?

5 A. At the very end of June.

6 Q. Is that the 29th or the 30th?

7 A. I think I landed back in Hong Kong on 30 June from
8 Los Angeles.

9 MR GROSSMAN: Thank you very much.

10 HIS LORDSHIP: Mr Dickie, thank you very much for coming to
11 give evidence this morning.

12 MR GROSSMAN: May I call Mr Crofts?

13 HIS LORDSHIP: What I suggest we do, Mr Grossman, is this.
14 You take Mr Crofts in chief and then we will take
15 a break then so that Mr Huggins can do his
16 cross-examination without a break in the middle.

17 MR HUGGINS: Thank you, my Lord.

18 MR GROSSMAN: I will in fact be asking a couple of
19 questions.

20 HIS LORDSHIP: That's fine.

21 MR GEORGE CROFTS (affirmed)

22 Examination-in-chief by MR GROSSMAN

23 MR GROSSMAN: Mr Crofts, you have made two statements in
24 this case. Would you look, please, in bundle IV, first
25 of all, at page 1289. I think that goes through to page

1 1300.

2 Another statement, at the next page, 1301, that goes
3 through to page 1314.

4 A. Yes.

5 Q. Those are your two statements, are they?

6 A. Yes, sir.

7 Q. And you adhere to them?

8 A. I do, sir.

9 Q. You adopt them as your evidence?

10 A. I do, sir.

11 Q. Just one or two questions before I sit down. Firstly,
12 at the time you were dismissed, which particular company
13 under the Cathay umbrella were you working for?

14 A. I was working for Veta but as part of Cathay Freighters.

15 Q. And where were you based?

16 A. I was based in London entirely, throughout my career
17 with Cathay Pacific.

18 Q. And I think following your dismissal you did go to
19 a Labour Tribunal in London on the basis of wrongful
20 dismissal and you received a payout?

21 A. I did, sir.

22 Q. As a result, your case before his Lordship in this
23 matter is on the basis of defamation only?

24 A. I understand so, yes.

25 HIS LORDSHIP: Any other questions, Mr Grossman?

1 MR GROSSMAN: Yes, I do have a question.

2 Part of the case against you, Mr Crofts, is that you
3 didn't have the best interests of the company at heart,
4 the company being, I am talking Cathay Pacific
5 generally. Would you tell his Lordship whether or not
6 you took part in or you assisted the company in any
7 matters other than flying for the company?

8 A. I did. In the mid-1990s I worked on an intranet
9 development team, doing website development. I worked
10 on a focus group for intranet development. I was part
11 of the Cathay Freighters' recruitment team. I was
12 UK-based liaison officer appointed by Mr Reynolds, and
13 I did a small amount of time for a rostering committee
14 along with Captain Rod Cook. I was the point of contact
15 for one of the recruitment agencies in the UK in trying
16 to recruit pilots for Cathay Freighters.

17 Q. Were you paid extra for any of this?

18 A. No.

19 MR GROSSMAN: Thank you.

20 HIS LORDSHIP: I think, as I suggested, Mr Huggins, we will
21 take a break now so that your cross-examination can
22 proceed without an interruption.

23 MR HUGGINS: That's kind, my Lord.

24 HIS LORDSHIP: Mr Crofts, you will just have to wait
25 15 minutes for your cross-examination, if you don't

1 mind. We will resume at 11.25.

2 (11.10 am)

3 (A short adjournment)

4 (11.26 am)

5 HIS LORDSHIP: Mr Huggins.

6 Cross-examination by MR HUGGINS

7 MR HUGGINS: Mr Crofts, may I just ask you a few questions
8 about what happened after your dismissal.

9 As I understand it, when you were explaining to
10 Emirates that you had in fact -- well, you explained
11 your side of the dismissal to Emirates, they accepted
12 your explanation and offered you a job; is that a fair
13 summary?

14 A. No. I never worked for Emirates Airlines, sir.

15 Q. Sorry. I have obviously made an incorrect note there.

16 Did you learn that Rogers got a job with Emirates?

17 A. I have no knowledge of that.

18 Q. Did you ever apply to Emirates?

19 A. I did. Their application was web-based, to the best of
20 my recollection.

21 Q. So were you not aware of those who were offered, amongst
22 your colleagues, jobs with Emirates?

23 A. I was not.

24 Q. You then obtained in March --

25 MR GROSSMAN: Sorry to interrupt my learned friend. I don't

1 think the evidence is that Mr Rogers got a job with
2 Emirates.

3 MR HUGGINS: Was he not offered one?

4 MR GROSSMAN: No.

5 HIS LORDSHIP: We can review that.

6 MR HUGGINS: Will you please forgive me, I will have to say
7 this to you as well: I am not hearing you very clearly.
8 Could you just speak up a little bit?

9 A. (Witness nodded).

10 Q. In March 2002, you got a job with Astraesus Airlines?

11 A. It was around about that time, yes.

12 Q. And then a job in Saudi Arabia on a Boeing business jet?

13 A. Correct.

14 Q. You then elected to give up flying and take up simulator
15 instructing; is that right?

16 A. I did at that point of time, yes.

17 Q. Then again in late 2004 you gave that up and you went
18 off to Australia?

19 A. The amount of work was becoming less and less, so it was
20 an opportunity to return to Australia.

21 Q. And ended up with Korean Airlines?

22 A. I did.

23 Q. Can you bring us up to date: as I understand it, you are
24 now with Drummond Supplies, is that right?

25 A. No.

1 Q. Sorry. Where did I get that one from?

2 A. Drummond Suppliers is a contract agency. They were the
3 ones who supplied me to Astraeus and to the training
4 organisation.

5 Q. So bring me up to date. After you joined Korean, what
6 happened after that?

7 A. I was working with Korean up until January of this year,
8 and I had a medical problem and I've been on medical
9 leave until June. I'm now reapplying for work.

10 Q. Will you forgive me for asking what the nature of the
11 medical problem is or if it's too --

12 A. Yes. I had open heart surgery.

13 Q. When was that?

14 A. December 2008.

15 Q. Sorry, I wasn't aware of that. China Airlines --
16 a number of your colleagues have received jobs or job
17 offers with them since 2002. Did you ever apply to
18 China Airlines?

19 A. I applied through agencies, I believe, yes.

20 Q. So Mr Fitz-Costa, Mr Shaw, Mr Blakeney-Williams, Gage
21 Young, Keene, Mr Carver was also offered one, they were
22 all offered jobs but you weren't?

23 A. I wasn't offered a job with China Airlines.

24 Q. Air New Zealand, did you apply to them?

25 A. I would not be able to work in New Zealand. I don't

1 hold a New Zealand passport, sir. I don't hold
2 a New Zealand ATPL.

3 Q. SIA Cargo where Mr Carver --

4 A. I did apply to Singapore Airlines.

5 Q. So he got a job and you didn't?

6 A. I take your word for that. I don't know. I have spoken
7 to Mr Carver about it.

8 Q. Qatar?

9 A. I would have applied to Qatar Airways.

10 Q. You would have or you did?

11 A. I presume I did. I don't recall whether I did or
12 I didn't but I'm sure I did. I applied to every job
13 I saw advertised.

14 Q. Nippon Cargo?

15 A. Yes, I applied to Nippon Cargo.

16 Q. I understand that Mr Shaw, Mr Blakeney-Williams and
17 Mr Morissette all got offers of jobs with them. Did
18 they put you on to applying for Nippon or did you do
19 that --

20 A. I think Nippon Cargo was through Parc Aviation. I can't
21 swear to that.

22 Q. Did you apply to Orient Thai?

23 A. I don't know Orient Thai.

24 Q. Hong Kong Express Airways Limited?

25 A. I don't know them either.

1 Q. Air Atlanta?

2 A. I did apply for Air Atlanta and worked for them for
3 a brief period of time.

4 Q. Virgin Blue?

5 A. I have applied for Virgin Blue.

6 Q. And we know that you got -- sorry, Mr Dickie got a job
7 with Easyjet? Did you apply to them?

8 A. No, I did not apply to Easyjet.

9 Q. Oasis, closer to Hong Kong?

10 A. I did apply to Oasis but did not get a job. I think
11 they folded.

12 Q. I know what happened to them. I am just interested in
13 whether you had a successful application. Mr Gage did
14 and you didn't. Is that the position?

15 A. I knew one of the people who worked there and I applied.

16 Q. Jade Cargo International?

17 A. I may have applied. I can't remember whether I did or
18 I didn't.

19 Q. You didn't get a job, anyway?

20 A. If I was given a job offer, I may have been working for
21 somebody else at the time when it came through. I don't
22 know.

23 Q. Can I just ask you this: apart from the option that was
24 open to you of asking your fellow plaintiffs in this
25 action where they had been successful in getting jobs,

1 so that you might apply yourself -- that was one thing
2 that you could have done; did you in fact do that?

3 A. I didn't know many of the other plaintiffs so I wouldn't
4 have asked them. My life in aviation has been spent
5 doing contracting. I would have applied through all
6 agencies, through all the ads I saw on Flight
7 International and other magazines.

8 Q. Can I just take a moment on that. You say you would not
9 have asked them about that because you don't know them
10 very well; is that what you're saying?

11 A. Yes. I wouldn't have specifically rung up people and
12 said, "Where are you getting a job?" If I had heard
13 information, I would have applied to wherever I felt at
14 the time there was an opportunity existed.

15 Q. Didn't it occur to you that it might be a good idea to
16 speak to airlines which had offered jobs to your fellow
17 49ers?

18 A. I would have spoken to those airlines, but without the
19 need to be prompted by somebody else.

20 Q. But you didn't, you say, ask certainly your
21 co-plaintiffs where they had been successful?

22 A. I would have been aware of it from hearsay.

23 Q. Ah, you would have been aware?

24 A. Probably have been aware of it. I don't recall
25 specifically, sir.

1 Q. What about the other original group of 49ers who didn't
2 pursue this action after 2005, certainly? What about
3 them? Did you ever go to them and say, "Hey, chaps,
4 where did you find jobs so I might apply there too?"

5 A. No. I had no contact --

6 Q. Why not?

7 A. I didn't see a need to. I was applying through all the
8 agencies and to all of the ads. I felt that I was doing
9 as much as I could to obtain a job.

10 Q. But it would have helped, wouldn't it, to have found out
11 whether they had been successful --

12 HIS LORDSHIP: I think he has answered the question. There
13 is no need to argue. He did what he did and he has
14 given the reason why he did what he did.

15 MR HUGGINS: My Lord, I am sorry to have taken up the time
16 and I'm sorry to have asked that question. I will move
17 on.

18 Let me go back -- and again forgive me for doing
19 this exercise you have seen Mr Dickie had to go through
20 this morning, will you help me in the same way.

21 Tell me this, please: a member of the union since
22 May 2000 in your case; have I got that right?

23 A. Correct, around about May 2000.

24 Q. In fact throughout your career with Cathay?

25 A. Well, when I was working for Cathay Freighters, I was

1 not permitted to be a member of the union. When I was
2 working for Air Services Limited, to be more specific.

3 Q. When was that?

4 A. That was prior to the year 2000.

5 Q. I think your statement and therefore your evidence now
6 has said that you've supported the union in its dispute
7 with the management with regard to rostering and
8 entitlements?

9 A. From the time I was a part of the union, yes.

10 Q. In May 2000?

11 A. Yes.

12 Q. And what particular aspects of your entitlements were
13 you interested in?

14 A. The preservation of my days off.

15 Q. Anything else?

16 A. Probably to ensure that we kept pace with inflation,
17 salaries; whatever the -- the general industrial
18 function of a union.

19 Q. Whatever the remuneration and benefits they were going
20 for, that's what you wanted them to go for?

21 A. In general, yes.

22 Q. Did you support the stance of the union in relation to
23 the attendance management programme?

24 A. I did not like the attendance management programme, but
25 it didn't affect me personally, I don't think.

1 Q. But it would have affected perhaps some of your chums,
2 so presumably you supported the union in regard to that
3 as well.

4 A. I supported the union in their objection to the
5 attendance management programme, yes.

6 Q. If you bear with me as I do this exercise, again I have
7 saw how quickly it can be done with Mr Dickie; I will
8 try to do the same with you.

9 Go to bundle X, please. If you go to pages 101 and
10 102, you will be able to see a document, the date of
11 which is in the bottom right-hand corner, 25 September
12 2000, when the union reminded members of a resolution on
13 contract compliance, a resolution which became effective
14 on 11 July 2000. You will see that in item 3 in the
15 middle of the page:

16 "This resolution is to become effective on 11 July
17 2000, and remain in effect until rescinded by the
18 membership."

19 Does this prompt a recollection?

20 A. I don't remember this specific document, but I'm sure
21 I probably received it in my pigeonhole at some stage.

22 Q. Let's talk about it, then, in more general terms.
23 Contract compliance campaign, this campaign, starting on
24 11 July 2000. You may just remember it was mid-July.
25 It doesn't matter the precise date, but you would have

1 been aware of that, would you not?

2 A. Probably.

3 Q. And what did you understand was the purpose of the
4 campaign?

5 A. This to me is just simply brinkmanship, sabre-rattling,
6 trying --

7 Q. Sorry, I'm not hearing?

8 A. Brinkmanship or sabre-rattling, trying to galvanise the
9 troops to work to rule.

10 Q. By which you understood ...?

11 A. Adhering to the terms of the contract.

12 Q. Were you not doing that previously?

13 A. I see a contract as an agreement between two parties,
14 and you can go beyond that if both parties agree.

15 An example would be working on a day off. Conversely
16 the company could remunerate your travel to the airport,
17 as they did sometimes in Cathay Freighters.

18 Q. I think in one of your statements -- we can go there to
19 the details if you like -- but essentially, in
20 a nutshell, I think you brought up an incident on 5 July
21 when you said you were asked to do essentially what you
22 perceived to be a favour for the airline, and you said,
23 "Look, I decline to work", because you simply weren't
24 obliged to do so under your contract. Do you remember
25 that incident?

1 A. I accept that, and it was also a stated policy of my
2 management in Cathay Freighters that you were not
3 obliged to work on a day off, you were not going to be
4 in trouble for not working on a day off, and I think if
5 you check my record you will find out that I worked
6 frequently on days off.

7 Q. But that particular incident, and the way in which you
8 have described it now, very fairly, if I may say so, you
9 were saying, "I'm not obliged to do that, I'm not going
10 to do it."

11 A. Yes. I had something on that weekend.

12 Q. Please, Mr Crofts, I am merely understanding your
13 position and the work to rule under contract compliance.

14 Did you understand, in a nutshell, that the key to
15 this campaign, as far as the union was saying to its
16 members, was, "Look, you don't have to do all kinds of
17 things that the management may ask you to do, and if
18 you're not obliged to do it under your contract, don't
19 do it." Is that the simplest way of putting all this?

20 A. Yes, and within that guideline I would use my judgment.

21 Q. You see, what I'm trying to understand from all of you,
22 and I think eventually we get there, is that the purpose
23 of that is to achieve what you perceive to be the
24 legitimate aims of the union to get the management to
25 come back to the table; right?

1 A. Hopefully everything is resolved through negotiation.

2 Q. But it needed pressure to get these people back, as you
3 saw it, because they were being so difficult?

4 A. Perhaps.

5 Q. It seems so simple to me. Where's the "perhaps" about
6 it? Isn't that the position?

7 HIS LORDSHIP: He said "perhaps".

8 MR HUGGINS: As your Lordship pleases.

9 So did you at least understand that that was the
10 rationale for the non-contactability encouragement that
11 the union was giving?

12 A. Yes.

13 Q. If you like, amongst other things, "Don't be contactable
14 during your off-duty or off-reserve hours"?

15 A. I think that's what it says, yes.

16 Q. Can we move, please, to 116 -- I will try and cut out
17 some of these -- "Contract Compliance Update":

18 "Is contract compliance working? Yes.

19 How do we know? The association office and your
20 committee receive daily reports and proof, including
21 examples of:

22 Extensive delays.

23 Flight cancellations", and so on and so forth.

24 You would have got letters of this kind, would you
25 not, in the normal course of events?

1 A. Yes. I would probably picked them up in --

2 Q. And presumably you were at least encouraged by the fact
3 that this was having some kind of effect, hopefully,
4 towards the end goal of getting these people to come to
5 the table; is that a fair way of putting it?

6 A. I look at this and see that it's qualitative and not
7 quantitative.

8 Q. Can you just explain that?

9 A. It says "extensive delays". Do we know what those
10 delays were? I don't.

11 Q. Let's not be drawn down what I think will probably be
12 an unhelpful line, and maybe all of this is unhelpful,
13 I don't know, but I'm not suggesting for one moment that
14 you would have been in a position to measure yourself
15 the extent of the disruption that was being caused.
16 I am merely saying that this was what the union was
17 announcing to you, and you would have seen that, in
18 broad terms?

19 A. Correct.

20 Q. So when you used the expression "qualitative not
21 quantitative", you can put it in your own words but
22 I understand you to be saying, "At least we were getting
23 quality results, it was having some effect, and exactly
24 how much I can't say but it's having some result"; is
25 that a fair way of putting it?

1 A. In any form of negotiation or dispute, both parties are
2 going to claim a degree of victory, all the way through,
3 and I think this is just the same thing. It's
4 galvanising the troops.

5 Q. To do what?

6 A. To keep going.

7 Q. In the hope that ...?

8 A. They will bring the people to the negotiating table.

9 Q. And how was that to be achieved?

10 A. Through negotiation.

11 Q. No, no, no. How would it achieve the result of getting
12 them back to the negotiating table?

13 A. Through the contract compliance.

14 Q. Which was perceived, in general terms it, as putting
15 pressure on them?

16 A. If the company felt they were under pressure, perhaps
17 they would negotiate.

18 Q. Am I losing it here, Mr Crofts? You will have to help
19 me. Unless it was perceived as something which was
20 likely to cause pressure on the management, what on
21 earth was the point of it?

22 A. I'm sorry, I'm not with you, sir.

23 Q. I'm not hearing you.

24 A. I'm not quite sure.

25 Q. You're not understanding me and I'm not hearing you.

1 A. Sorry. This is just a standard negotiating tactic, as
2 far as I can see. I took it at face value for what it
3 was.

4 Q. I mean, I don't know, some of your colleagues have been
5 using words like "propaganda", "bluff", and so on. Is
6 that the way you perceived it?

7 A. Yes. Both sides will claim a certain degree of victory
8 all the way through.

9 Q. Very well. Did you go to any of the focus discussions
10 that are referred to, from time to time?

11 A. No. I was based in London and I didn't get to Hong Kong
12 very often.

13 Q. That's right. So we cross that off, thankfully.

14 Can we go to pages 178 and 179. There's a letter
15 here at the bottom of page 178 about contract
16 compliance, a bit more specific than some of the earlier
17 ones:

18 "Contract compliance is definitely working, but it
19 can always work better. Ask yourself if you are rigidly
20 adhering to these numbers each and every time they are
21 applicable": the 45 minutes, the 80 minutes, the 120
22 minutes; do you see that?

23 A. Yes, sir.

24 Q. For what it's worth, did you understand that that's what
25 the union was asking members to rigidly adhere to?

1 A. I do. Some of it wasn't applicable to --

2 Q. Any of it?

3 A. Some of it was not applicable.

4 Q. Tell us which part was and which part wasn't.

5 A. We didn't do reserve duty in Cathay Freighters, as far
6 as I can remember.

7 Q. In relation to 45, 80 and 120, just tell us which one
8 was applicable to you and which was not.

9 A. The 80 minutes would have been applicable, I think. We
10 didn't do reserve duty at home in London, as far as
11 I remember, so I don't think the 120-minute rule applies
12 either.

13 HIS LORDSHIP: 45 wouldn't apply to you either because that
14 says if you are on reserve duty --

15 A. Hong Kong reserve -- you are correct, your Lordship. We
16 did not do reserve duty, to the best of my recollection.

17 HIS LORDSHIP: So 45 wouldn't have applied to you,
18 120 wouldn't have applied to you; it's only 80?

19 A. Correct, your Lordship.

20 MR HUGGINS: What about the attitude of "I'll do my best",
21 do you see that?

22 (After conferring with co-counsel) Let's move on.

23 Again, Mr Crofts, I have to try and not waste too much
24 of the court's time.

25 Can I then move on to pages 196 and 197. Pages 196,

1 197 and 198, as I have shown your colleagues, is
2 a letter from Nigel Demery, your president, on 16 May
3 2001, talking about a proposed meeting on 20 June, the
4 EGM. Do you see that?

5 A. Yes.

6 Q. The agenda, which you will see actually in front of that
7 document, was attached to the document when it was sent
8 out, but we have put it in the bundle just before the
9 covering letter. The agenda is at page 194 and the
10 proxy, if you had wanted to use a proxy, is at page 195.

11 Do you remember getting this?

12 A. I don't specifically remember getting the document.

13 Q. Is it likely that you did?

14 A. It's probable that I would have received it in my box.

15 Q. Can you help us at all as to what you did with it?

16 A. It's probable that I would have voted by proxy.

17 Q. Why do you say that, because you can't remember or
18 because that was what you normally --

19 A. I can't remember it and I was not in Hong Kong that
20 often to attend meetings, so doubtless I put a proxy in.

21 Q. Was there somebody who generally acted as your proxy,
22 a chum of yours?

23 A. No. I would have put it in by mail.

24 Q. So you would have put it in, supporting the motion, and
25 mailed it?

1 A. Yes, I think you can give the chairman a proxy --

2 Q. Yes, I noticed that. But did you do that? You don't
3 remember?

4 A. In probability, that's what I would have done.

5 Q. You would have been likely to give it to the chairman?

6 A. I would have been likely to allow the chairman the proxy
7 by sending it in by post.

8 Q. I just have to I follow that. I thought you were saying
9 you voted in support of it -- I suppose it comes to the
10 same thing: if you give it to the chairman, your
11 anticipation was that he would vote in favour.

12 A. I think that's a presumption one could make.

13 Q. Only you can tell me what you did, whether you simply
14 left it to him to decide the vote or you put your cross
15 in the right place, supporting it, and gave it to him?

16 A. As far as I can remember, I would have given a proxy.
17 I cannot remember whether I would have voted for or
18 against. Probably for.

19 HIS LORDSHIP: Can I point out, Mr Huggins, that it doesn't
20 necessarily follow that if you give the proxy to the
21 chairman, he will vote in favour, assuming he himself is
22 in favour, because the instruction says "the chairman
23 will exercise your vote as you have indicated."

24 MR HUGGINS: His Lordship was quite rightly pointing out
25 that I hadn't picked up that relevant piece of detail to

1 make the question have any help at all. What did you
2 do?

3 A. In all probability -- I can't remember, but in all
4 probability I would have put a "for the motion" and
5 given it to them.

6 Q. Can I ask you about page 196, as I have asked everybody
7 else. Page 196, the covering letter, explaining why the
8 union felt obliged to go down this route, and item 3 in
9 particular, telling you all:

10 "Your committee has selected 'limited' industrial
11 action with the aim of increasing the pressure
12 incrementally and only to the minimum amount required to
13 achieve our reasonable objectives."

14 Would you have seen that at the time? Obviously if
15 you were voting you would.

16 A. I presume I saw it. If I submitted the proxy, I would
17 have seen the attached letter.

18 Q. I think that follows, but I had to ask you. What did
19 you understand was limited industrial action?

20 A. I think it was empowering the union to use their
21 judgment to keep industrial pressure on.

22 Q. I think, in fairness to you, you might want me to point
23 out that at page 197 at the bottom and page 198, you
24 were probably aware of the union telling you that the
25 committee had evaluated all the options between the

1 boundaries of doing nothing, to embarking on an all-out
2 indefinite strike and what they had come up with was
3 something in between; that was your understanding, was
4 it?

5 A. That's what it says here, yes.

6 Q. But that was your understanding?

7 A. Yes.

8 Q. Indeed, to be fair to the union, what they were saying
9 to the members was that obviously there was going to be
10 disruption but "we're going to try and keep that level
11 of disruption to the minimum that we can to obtain our
12 objectives"; was that your understanding as well?

13 A. I think so, yes.

14 Q. Could we look, please, and I promise it will be brief,
15 at page 211. This is just an example of a number of
16 announcements to you as a member, from the union,
17 "Contract Compliance". This happens to be on 12 June
18 2001, a matter of days before the stepping up of the
19 pressure. It says this:

20 "Contract compliance continues to apply added
21 pressure to the commercial operation. Management would
22 love you to believe that it is having no effect, so that
23 you release the pressure. Do not be fooled. If
24 increasing roster instability doesn't convince you,
25 consider the amount of management time and effort spent

1 in efforts to combat contract compliance."

2 Is it likely that this would have been seen by you,
3 however much attention you paid to it at the time?

4 A. Possibly. I can't testify that I did or I didn't see
5 this document.

6 Q. Because of the lapse of time?

7 A. Correct.

8 Q. That's why I am putting it to you on the basis of
9 probability, to see what you say. You probably would
10 have done?

11 A. I understand, yes.

12 Q. Pages 217 to 220. This is a letter from the general
13 committee of the union, for and on behalf of the members
14 of the union -- we see that on the second page of this
15 open letter -- basically being sent out to the Hong Kong
16 travelling public five days before the vote on this EGM,
17 explaining the union's position on this.

18 Would you have seen that, in the normal course of
19 events?

20 A. I don't recall seeing it, but probably.

21 Q. That's probably as far as I can take it, Mr Crofts.

22 Again, you will see, looking at it now:

23 "... we regret sincerely the need to take 'limited
24 industrial action' and the inconvenience this will cause
25 to you, our passengers. This motion will be voted on at

1 an [EGM] on 20 June 2001."

2 Telling the public the issues are complex, details
3 might confuse or mislead, so we are not going to go into
4 that with the travelling public.

5 "However, resolutions to the issues have been put
6 before the Swire Group management at the airline, for
7 many years", and essentially saying they are being
8 unhelpful and they are refusing to negotiate
9 constructively and that "has led the committee proposing
10 'limited industrial action' to our members."

11 A bit of a mouthful, but that was the understanding
12 you would have had at the time?

13 A. Yes.

14 Q. Is it your position, as indeed one or two of your
15 colleagues have said, "Limited industrial action, but at
16 that stage I don't know what it is"?

17 A. Correct.

18 Q. And what stage did you understand what it was to be?

19 A. I didn't, because very shortly after this document came
20 out I had completed a rotation and I was in the UK on
21 sick leave.

22 Q. Just bring me up to date on the dates. Can you remember
23 the dates of that?

24 A. I can't remember specifically. I think my last --

25 I think I landed in the UK somewhere around about

1 20 June.

2 Q. One of your colleagues had told us, and it may or may
3 not be the position with you, that while he was away he
4 would still have got these via email?

5 A. I may or may not have, I cannot recall.

6 Q. I think the evidence in the case so far -- I'm been
7 reminded by Mr McLeish, helpfully -- is that you were on
8 leave from 23 June.

9 A. You have the document that I don't. You have the
10 document there.

11 Q. From at least that date to 8 July; does that sound about
12 right?

13 A. Correct.

14 Q. Very well. So your recollection is, pretty sure it
15 would have been done by proxy, you wouldn't have
16 attended the meeting, so there's not much point in me
17 taking you to the minutes of the meeting.

18 A. Correct.

19 Q. Having cast your vote in favour of this limited
20 industrial action, again is it fair to say, in general
21 terms, to cut out all the detail, that it was intended
22 to have the same sort of effect as the contract
23 compliance, only stepping up a gear; is that a fair way
24 of putting it?

25 A. I think so, yes.

1 Q. I won't trouble you with the details then, but stating
2 the obvious, the purpose was to achieve the union's
3 targets in relation to the contracts of its members?

4 A. Yes.

5 Q. Are you able to help, as I have asked other people, and
6 some have had their -- well, it doesn't matter what
7 other people have said. What's your understanding about
8 the difference between simple contract compliance and
9 limited industrial action?

10 A. Contract compliance to me is adhering to the terms laid
11 out in the contract, a limited industrial action could
12 be a broad scope of things, including letters in
13 a newspaper.

14 Q. Again, designed to pressurise the management, otherwise
15 there would be no point in having it?

16 A. Yes.

17 Q. At least I've got that much. I just have to do this
18 with everyone. It's my duty to do so.

19 That's the position, is it not?

20 A. Yes.

21 Q. In that case I will bring this to as quick a close as
22 I can. Will you just bear with me for one moment.

23 I had other questions but I think it would be
24 sensible just for me to sit down, Mr Crofts. Thank you
25 very much.

1 HIS LORDSHIP: Just one point of clarification, Mr Huggins.

2 MR HUGGINS: Of course, my Lord.

3 HIS LORDSHIP: You referred to attendance management
4 programme. I think you mean the AMP.

5 MR HUGGINS: Yes.

6 HIS LORDSHIP: I think it's absence management programme.

7 MR HUGGINS: Did I say "attendance"? I'm so sorry.

8 HIS LORDSHIP: You said "attendance" twice but just so that
9 everyone is clear, my understanding is that that's the
10 same thing as the absence management programme, AMP.

11 MR HUGGINS: That's what I meant, my Lord. Thank you very
12 much for that correction.

13 HIS LORDSHIP: Mr Grossman.

14 Re-examination by MR GROSSMAN

15 MR GROSSMAN: Just one point. You mentioned when you were
16 applying for a position you did it through Parc
17 Aviation. Who are they?

18 A. In the airline world there are agents who approach
19 airlines and get you jobs. The primary function of that
20 is that the agency operates a back-to-back contract.
21 You work for the agency or the agent supplies. In fact
22 that's how Cathay Pacific recruited its freighter pilots
23 in the first place, through a company called Euro
24 Pacific, or you can directly apply to the airlines as
25 you would in the case of Emirates. So Parc Aviation,

1 Bond Aviation Services, Betts Aviation, GAP -- I could
2 go on listing thousands of them. They are all agencies.

3 Q. They are all agencies. They are not flying services
4 themselves?

5 A. No. They basically are brokers and they take a
6 commission for placing you with a company.

7 Q. Can you tell us, did you apply to any of these besides
8 Parc Aviation?

9 A. Parc Aviation, to GAP, to Fiona Betts who runs Betts
10 Aviation, to Strongfields -- I'm trying to think of the
11 rest of them. There are hundreds, and I applied to most
12 of them. I could keep going on and on.

13 MR GROSSMAN: Thank you very much.

14 HIS LORDSHIP: Mr Crofts, thank you very much for coming to
15 give evidence this morning. You are discharged.

16 MR GROSSMAN: I call Mr Gage.

17 MR DOUGLAS GAGE (affirmed)

18 Examination-in-chief by MR GROSSMAN

19 MR GROSSMAN: Mr Gage, I think you have made two statements.

20 If you would look in bundle IV, please. To go through
21 it more simply, your supplemental witness statement
22 appears before your witness statement, so if you start
23 at page 1184, which is your supplemental statement, we
24 will take it from there. Can you just confirm, that
25 goes up to page 1205.

1 A. Yes, that's mine.

2 Q. Then if we go to page 1212, just a couple of pages
3 further on, to page 1225, this is your original witness
4 statement, I think.

5 A. Yes, it is.

6 Q. Do you adhere to what you said in these statements?

7 A. I do.

8 Q. Do you adopt them as your evidence?

9 A. I do.

10 Q. There are a few questions I'd like to ask you. As you
11 know, one of the allegations against you is that you
12 didn't have the best interests of the company at heart.
13 I'd like you to tell his Lordship a little about what
14 you did extracurricularly for the company. First of
15 all, are you similar with a charity known as Sunnyside?

16 A. The Sunnyside Club, yes.

17 Q. Would you explain to his Lordship, please, what that is,
18 or was?

19 A. Well, it still is in fact.

20 Sunnyside Club is a totally in-house charity within
21 Cathay Pacific Airways and Swire Group, within Hong
22 Kong, which was formed in the mid-1970s by a group of
23 Cathay Pacific Airways pilots and flight engineers, who
24 had been helping this particular school for handicapped
25 Chinese children out in Junk Bay called the Sunnyside

1 School. They had been assisting the school whilst being
2 involved in round table. At the age of 40 they had to
3 leave round table but they continued helping the school
4 with buying them things that the government wouldn't
5 provide, like an over-ground swimming pool and
6 wheelchairs and all sorts of stuff.

7 So they decided to form their own little ad hoc
8 group, and they called themselves the Sunnyside Club.
9 Really this spread through the airline and people came
10 along and said, "Can I contribute money?" This
11 continued for a number of years and it grew in size,
12 primarily, to start with, just with aircrew members.

13 In -- I joined in 1986 -- I can't remember the exact
14 date now but it was probably in about 1989 or 1990 that
15 the club had now got to such a size, and was doing
16 charitable works not just for the Sunnyside School but
17 for other schools looking after handicapped children in
18 the area, that we applied to become a registered
19 charity, which meant we could now encourage businesses
20 to help us with money and projects and all sorts of
21 other stuff.

22 I joined the Sunnyside Club, as it was known, in
23 1986, when I joined Cathay, and I started helping out,
24 not just giving money but helping out with projects and
25 with the children. As with a lot of things, one

1 volunteer is worth six press men, so the next thing
2 I knew, I was asked if I would be on the committee to
3 help run the show, and eventually I finished up as
4 a vice-chairman and for five years I was chairman.

5 Q. At the time you were dismissed from Cathay, what was
6 your position?

7 A. I was the chairman.

8 Q. at that stage who was your vice-chairman?

9 A. Mike Fitz-Costa.

10 Q. The one who has given evidence?

11 A. Correct.

12 Q. And the work that you did, was that done during -- when
13 was that done?

14 A. In our free time.

15 Q. Did you get paid for it?

16 A. No.

17 Q. How much of your free time did it take up?

18 A. As much as was necessary, as much as I could give. You
19 know, it was ebb and flow, like all these things, but
20 there was usually stuff going on, some times more than
21 others. You know, outings would take up time.

22 Administrative stuff, committee meetings, would take up
23 other time.

24 Q. Did --

25 HIS LORDSHIP: Mr Grossman, there's a lot about this in the

1 witness statement itself, including photographs, and so
2 forth, in the bundle. I'm not sure to what extent you
3 have to explore all this in-chief.

4 MR GROSSMAN: Just one other matter I wanted to ask you
5 about. Tell us about hot air balloons.

6 A. Hot air ballooning? Okay. It had been a sport of mine
7 for a number of years before I came to Hong Kong, I had
8 a hot air balloon licence. In fact, if the truth be
9 known, is possibly helped me get an interview with
10 Cathay, because I put that on my CV, and I knew
11 Cathay Pacific had a hot air balloon, so I actually
12 wrote in one of my letters to the recruiting department,
13 "I now have my hot air balloon licence which means if
14 you employ me I can also fly your hot air balloon for
15 you", tongue in cheek, but it seemed to maybe trigger
16 something.

17 Anyway I came to Hong Kong, I joined the Hong Kong
18 Balloon and Airship Club, and one of the balloons that
19 they have -- they have about four or five -- was
20 a Cathay Pacific balloon, and I was one of, for a number
21 of years, five licensed pilots in Hong Kong. I used to
22 take the Cathay Pacific hot air balloon to various
23 ballooning events around the world, sometimes because
24 Cathay Pacific instigated it -- they wanted the balloon
25 for a promotion somewhere, opening a new route or

1 something like that, and we would take the balloon and
2 display it -- and other times the Hong Kong Balloon Club
3 would go to the company and say, "There's a particular
4 competition coming up that will attract a lot of media
5 attention; would you like the balloon flown there?" If
6 they said "yes", we would organise people to take the
7 time to go do it.

8 I spent a lot of my time, in fact the first seven or
9 eight years working for Cathay Pacific Airways,
10 virtually all my leave I took to go hot air ballooning
11 around the world. That was my passion and --

12 Q. When you say a Cathay Pacific balloon, did it have
13 a Cathay Pacific logo on it?

14 A. Yes. It's big. It's about 90 feet high, 40 feet across
15 a massive great big flying billboard that just says --
16 it's green and white stripes, which was of course the
17 old Cathay colours, with "Cathay Pacific Airways".

18 Q. Did you get paid for any of this?

19 A. No.

20 Q. Of the 18 plaintiffs in this case, did any of them help
21 you?

22 A. Captain Dickie helped me on a few occasions.

23 Q. Who gave evidence this morning?

24 A. That's correct.

25 MR GROSSMAN: Thank you.

1 HIS LORDSHIP: Thank you very much, Mr Grossman.

2 Mr Huggins?

3 Cross-examination by MR HUGGINS

4 MR HUGGINS: Mr Gage, I am going to try and finish you by
5 lunch.

6 A. Are you really? Be gentle; I bruise easily.

7 Q. Mr Gage, you will appreciate that I have to ask you
8 a number of questions. I will try to keep it as short
9 as I can.

10 A. Of course.

11 Q. Can I begin by asking you about some of the things that
12 happened after you were dismissed.

13 A. Yes.

14 Q. Immediately after your dismissal, as I understand it,
15 instead of seeking a new job, you volunteered to assist
16 in the union's office in Tsim Sha Tsui, in whatever
17 capacity was needed, for a period of 18 months? I am
18 quoting your statement.

19 A. Yes, that's correct.

20 Q. Did you feel that was perhaps more important than
21 getting -- applying for a new job yourself?

22 A. Well, it doesn't say I didn't -- we were in a situation
23 where I think in the early days all of us were rather
24 hoping that this situation would have been resolved in
25 a rather more amicable fashion than it has turned out to

1 be, and my home was in Hong Kong, this is where I live,
2 and the Aircraft Association had an enormous amount of
3 work that needed to be done and I felt that I could best
4 spend my time helping them sort out distressed families
5 and all that kind of thing, as best I could.

6 Q. The only reason I ask, Mr Gage, is that of course the
7 longer you choose to be off flying, as a pilot, the more
8 difficult it's going to be for you to get another job as
9 a pilot; is that not right, in general terms?

10 A. Potentially, that's true, yes.

11 Q. Nevertheless, it's your choice: you put, perhaps
12 commendably, the union activities before your own
13 wellbeing in that regard?

14 A. To be frank, Mr Huggins, a number of people, a number of
15 my 49er colleagues, shall we say, dived straight in, as
16 soon as the all-clear was given by our lawyers, and
17 started applying for jobs. They were all being
18 stonewalled, and I don't like banging my head against
19 a brick wall, basically.

20 Q. Mr Gage, what I'd like you to do, if you would, is to
21 focus on your own position.

22 A. Sure.

23 Q. The others are all being given a chance to speak --

24 HIS LORDSHIP: I think he was going to focus on his own
25 position. Had he been allowed to speak a little bit

1 more, he would have said I think, possibly, that on the
2 basis of the stonewalling that he saw his colleagues
3 encountering, then that affected the decisions that he
4 took.

5 A. I couldn't put it better myself, my Lord.

6 HIS LORDSHIP: You can explore in what way it affected him,
7 but that's up to you, Mr Huggins.

8 MR HUGGINS: What I was perhaps more interested in is what
9 in fact you have said in your own statement, because in
10 your statement principally you have focused upon, first
11 of all, the fact that for 18 months you carried out
12 union activities.

13 A. Yes.

14 Q. Then at another passage you suggest that part of the
15 reasoning, in any event, in not seeking alternative
16 employment was a concern that, to use your own words, to
17 seek alternative employment could be construed as
18 acquiescence in the termination of your employment. Is
19 that what you've said in your evidence?

20 A. Yes, because immediately after the purported termination
21 by Cathay Pacific Airways, we were advised by the legal
22 team at the time --

23 HIS LORDSHIP: We have gone through this with other
24 witnesses.

25 A. -- to sit on their hands.

1 HIS LORDSHIP: It's not usually a good idea to say what the
2 legal advice is.

3 A. I'm sorry.

4 HIS LORDSHIP: Because that implies waiver of legal and
5 professional privilege. There are other plaintiffs; it
6 may not be for you just to waive your own legal and
7 professional privilege without possibly affecting
8 others.

9 However you understood it, that was your
10 understanding --

11 A. Yes.

12 HIS LORDSHIP: -- that was your point of view at the time?

13 A. Yes. Sit on our hands until -- until.

14 HIS LORDSHIP: Right.

15 MR HUGGINS: The only follow-up I would like to make, with
16 his Lordship's leave, is: for how long after did you
17 rely on that advice? Don't tell me what precisely the
18 terms of it were, but based upon that advice, for how
19 long did you determine to sit on your hands before you
20 decided to go and look for work?

21 A. That was later on in 2002, I think. Later on. It was
22 well into 2002. I couldn't tell you when exactly.

23 Q. And I think you have said in your statement, in
24 paragraph 24 of one of them, that in early 2002 it was
25 your understanding that Emirates Airlines were also

1 expanding and hiring pilots at the time?

2 A. Mmm.

3 Q. And what was the basis of that understanding; what you
4 were hearing from your colleagues?

5 A. The aviation press, scuttlebutt, talking to people.

6 I was in the AOA office.

7 Q. And I think you also said, "I knew Singapore Airlines
8 was hiring pilots for both their air cargo as well as
9 their passenger operations"/

10 A. That's correct.

11 Q. So again that was your understanding of what was going
12 on.

13 Did you have a similar understanding about
14 China Airlines? Is that how you came to apply to them,
15 in 2002? They offered you a job as a captain on their
16 747-400s in the autumn of 2002, did they not?

17 A. That is correct. They did, yes.

18 Q. But you chose to leave that job?

19 A. No, that's actually not quite correct.

20 Q. Is that not right?

21 A. No, that's not correct.

22 Q. All right. So you did leave it?

23 A. No, actually I didn't. They left me. They terminated
24 my contract, Mr Huggins.

25 Q. And when did they terminate your contract?

1 A. In March 2003.

2 Q. Was that not a question of having a better job, as far
3 as you were concerned, with European Aviation Air
4 Charter, or was that a downgrade?

5 A. Like I just said, they terminated my contract in March
6 2003.

7 Q. And you went to European Aviation Air Charter?

8 A. I was subsequently offered a job with European Aviation
9 Air Charter. I didn't leave China Airlines to go to
10 European Aviation Air Charter. China Airlines
11 terminated my employment. I was unemployed. I was then
12 offered a job with European Aviation Air Charter.

13 Q. Forgive me -- it may be that I haven't picked up the
14 detail -- what was the gap between leaving
15 China Airlines and getting to European Aviation Air
16 Charter?

17 A. Sorry, can I just say this again: I didn't leave. They
18 terminated --

19 Q. Don't worry about who terminated who.

20 A. Okay. A matter of a few weeks.

21 Q. That's really what I was after. So it was a relatively
22 smooth transition from one to the next?

23 A. Well, having my employment terminated wasn't very
24 smooth, no. But yes.

25 Q. You are not going to lay that at Cathay's door, surely?

1 A. Definitely not, Mr Huggins.

2 Q. Let's move on. You got another job with Orient Thai
3 Airlines in November 2004 to February 2005?

4 A. Mm-hmm.

5 Q. Then, in that same year, 2005, another job with Flybe?

6 A. That's correct.

7 Q. When you left Orient Thai in February 2005, was that
8 again you being terminated, or you terminating them?

9 A. No. I went to fly for them on a short-term contract,
10 because they needed people over -- that's the sort of
11 airline they are. They were very -- I wouldn't even say
12 third-tier airline -- they were a charter airline in
13 Thailand and they wanted people for their busy season,
14 which in Thailand is Christmas and Chinese New Year,
15 which at that time was December, January and February.
16 So I went there knowing that at the end of February,
17 unless they asked me to stay because they needed
18 people ...

19 Q. And when did you return to Hong Kong to work for Oasis?

20 A. I started work for Oasis in March of -- where are we
21 now, 2009 -- 2007.

22 Q. And can you bring us up to date with what you've been
23 doing since then?

24 A. Since when?

25 Q. Since you joined Oasis.

1 A. Well, I flew for Oasis until they went out of business.

2 Q. That's why I need the update.

3 A. Okay, which was in April 2008. I'm now working -- I'm
4 living in Dohar and working for Qatar Airways.

5 Q. As a captain on the 747s?

6 A. No.

7 Q. Sorry, have I misread that? That was as a captain with
8 Qatar?

9 A. Correct, yes.

10 Q. Out of interest, I think one of your colleagues may have
11 got a job with Qatar some while ago, before that. Did
12 you not know about that, or did you ever apply yourself
13 earlier to Qatar Airways?

14 A. Sorry, I don't follow.

15 Q. In 2008, you're telling us, you got a job with Qatar.

16 A. It was after Oasis went out of business, which was April
17 2008, yes.

18 Q. So that's, if I may say so, some years after you were
19 dismissed in 2001?

20 A. Yes, because I had other employment in the meantime.

21 Q. What I'm asking, Mr --

22 HIS LORDSHIP: How is this going to help me, Mr Huggins?

23 MR HUGGINS: All it takes is an indication from
24 your Lordship and I will move on.

25 HIS LORDSHIP: I think we have got the plan. Unless you are

1 putting it to him that he should have applied to Qatar
2 earlier on, I'm not sure it will help.

3 MR HUGGINS: Mr Gage, let me go back and do the exercise
4 I've got to do, and I'm sure it can be done before
5 lunchtime. Bundle X.

6 HIS LORDSHIP: Page 101 or page 116, Mr Huggins?

7 MR HUGGINS: Let's start with page 101.

8 HIS LORDSHIP: Possibly page 87 sometimes.

9 MR HUGGINS: Let's not break the habits of a lifetime.

10 Pages 101 and 102, where we have a record of
11 a document in September 2002, 25 September 2002. You
12 will see the date in the bottom right-hand corner.

13 A. Yes, I do.

14 Q. Talking about the contract compliance campaign which
15 began in July 2000, and with various encouragements,
16 "Beyond the Motion", to do various things.

17 Now, you have been sitting in court hearing this, no
18 doubt, certainly all this morning.

19 A. Yes.

20 Q. What did you know about the contract compliance
21 campaign? Presumably you knew about it?

22 A. What did I know about it? Well, I knew what was sent to
23 me by the association.

24 Q. This is helpful, Mr Gage. It will probably accelerate
25 me a wee bit.

1 So this comes through; in the normal course of
2 events, you would have got that and you would have seen
3 what it's all about?

4 A. Yes, indeed.

5 Q. I think -- and I perhaps forgot the preamble I have been
6 giving all of the plaintiffs from their own
7 statements -- that having the joined the union you
8 supported them in their dispute with management with
9 regard to their contractual entitlements and rostering
10 and so on. Did I understand that?

11 A. Yes. I would say that's fair.

12 Q. What did you understand was the purpose of the contract
13 compliance? You have heard what others have said.
14 Let's hear how you put it.

15 A. I believe that the association were trying to encourage
16 Cathay Pacific Airways to comply with their part of the
17 contract.

18 Q. And how did you see that to be achieved by the contract
19 compliance campaign?

20 A. Because I saw that Cathay Pacific Airways were not
21 complying with their side of the deal, "the deal" being
22 the contract; that they were manipulating -- I don't
23 know if "manipulating" is the right word, but they were
24 interfering with our contract and they were doing so in
25 order to achieve a task which was difficult, if not

1 impossible, for them to achieve because of lack of crews
2 to fulfil the task that was required.

3 Q. I'm trying to ask you how you perceived the campaign was
4 going to bring them away from that position. How was it
5 going to -- how did you perceive it as having that
6 effect?

7 A. Applying pressure from the employees.

8 Q. That's all I want to understand from you. I keep
9 putting things to people and I think they become
10 defensive, thinking, "If that's what he wants me to say,
11 I'm not going to say it", but in your own words, it
12 obviously was to put pressure on the airline -- there is
13 no other purpose, is there? -- to achieve what you
14 regarded as legitimate aims of the union? Is that not
15 a fair way of putting it?

16 A. To achieve the legitimate aims of the union? I'm not
17 sure I would have put it in quite those words, no,
18 but --

19 Q. That's why you should put it in your own, Mr Gage, any
20 way you like.

21 A. I thought I did.

22 Q. How would you put it?

23 A. The union representing the pilots was endeavouring to
24 ensure that Cathay Pacific Airways complied with their
25 part of the contract.

1 Q. But how was it going to do that? You have used the word
2 "pressure", quite properly if I may say so; it's absurd
3 not to recognise it. How was the pressure going to
4 work?

5 I can spell it out for you. It seems to be obvious.
6 It's surely by causing a level of disruption, a minimum,
7 possibly, perhaps, but a level of disruption or a threat
8 of a level of disruption or a bluff, whatever word you
9 want to use. Otherwise, what is it about?

10 A. Mr Huggins, the way I look at it is, the association
11 didn't have to cause any disruption. Cathay Pacific
12 Airways were causing disruption all on their own, and
13 they were doing quite a good job of it, too.

14 Q. I have heard that part of the answer. I am trying to
15 see the other part of the coin as to how the pressure
16 was going to be applied to them. You weren't applying
17 pressure to the union.

18 A. No.

19 Q. You were applying the pressure to the management. How?

20 A. By strictly complying with the contract and advising the
21 membership that if they had a guaranteed day off, that's
22 exactly what it meant. It was a guaranteed day off; as
23 an example.

24 Q. Here they are talking about the key being
25 contactability. If you're not contactable, they can't

1 in any way pressurise you or influence are or ask you
2 for assistance on your contractually entitled day off.

3 A. Correct.

4 Q. I understand what you are saying, Mr Gage.

5 A. Good. Thank you.

6 Q. I'm sorry, I just have to do it as quickly as I can, we
7 see a number of examples in this bundle --

8 A. Mm-hmm.

9 Q. -- of, let's start with page 116 -- there are lots of
10 others, I will get through them as quickly as I can, as
11 I say -- announcements by the union --

12 A. Yes.

13 Q. -- saying that it was having some effect --

14 A. That's what it says.

15 Q. -- they haven't got there yet but it was having some
16 effect.

17 A. Yes.

18 Q. You would have seen things like that?

19 A. Yes.

20 Q. That is what it was designed it to do, to have some
21 effect and hopefully they were going to come eventually.

22 A. Yes.

23 Q. I know it's obvious but I just have to put it to you.

24 A. Okay.

25 Q. "Extensive delays, flight cancellations", obviously you

1 can't measure yourself how long the delays are, but it's
2 having that effect, to some degree; yes?

3 A. Apparently so, yes.

4 Q. One of your colleagues this morning was using the
5 expression "qualitative not quantitative". Would you
6 adopt that expression?

7 A. Those are two very big words. I'm not sure
8 I necessarily understand exactly what he meant by that.

9 Q. I'll leave it. I think we've got the gist of what
10 you're saying.

11 A. Yes.

12 Q. Again, perhaps it wasn't necessary for them to spell
13 this out, but on a number of occasions in these
14 documents the union was making reference to the fact
15 that it was absolutely essential to have full support
16 from loyal members of the union, full members of the
17 union, otherwise the campaign wasn't going to be
18 effective. In general terms, you understood that to be
19 the position?

20 A. Yes.

21 Q. Again, perhaps it doesn't add very much to it, but on
22 a number of occasions they were reminding members that
23 they would regard it as -- they used the word
24 "misconduct" not to go along with the campaign. Did you
25 see those announcements, however much attention you

1 yourself paid to it?

2 A. Could you run that past me again? I don't quite
3 understand what you said there.

4 Q. Let's just look at one of them. Page 117. "MISCONDUCT
5 OF MEMBERS", in large black letters.

6 A. Right.

7 Q. "On the eve of the release of names of colleagues in
8 breach of the current contract compliance resolution,
9 let us remind ourselves of the processes involved in any
10 disciplinary action and ensure we all place the
11 appropriate level of importance on such action."

12 Did you see things like this?

13 A. Well, if I'd -- yes, I would have read this document.

14 Q. So that actually the reality was that they would release
15 the names of people in breach of the campaign,
16 presumably to encourage the others; is that your
17 understanding of it?

18 A. I don't know what "presumably" there is about it. If
19 they said they were going to release the names of people
20 in breach, I can't tell you why they were going to do
21 that. That would be up to the general committee, and
22 I put my trust in the general committee to do whatever
23 they saw fit.

24 Q. Fair enough. In that case I won't put all those other
25 documents to you.

1 Page 136. You may say, "More of the same", but just
2 let me put it to you. Page 136:

3 "Contract compliance.

4 Effectiveness.

5 "Contract compliance continues to increase in its
6 effectiveness as reserves are exhausted and the
7 management's options wither. Multiple cancellations and
8 extensive delays continue to increase on a weekly
9 basis."

10 More encouragement, "Come on boys, it's having some
11 effect"; is that how you understood it?

12 A. Yes. That's how I would read it, yes.

13 Q. A point I think which is made in a number of documents
14 but we can take one, for example, page 149, again in
15 large bold type:

16 "CONTRACT COMPLIANCE.

17 "For the avoidance of doubt, management has not made
18 significant progress towards our remuneration and
19 rostering concerns and therefore contract compliance
20 campaign remains in full effect."

21 Do you see that?

22 A. I do.

23 Q. And again you may think it's obvious but I ask you, to
24 see whether you agree, that it was your understanding
25 that this was a campaign which had to be kept in full

1 effect until such time as the objectives had been
2 achieved, at which point it's not necessary anymore; was
3 that your understanding?

4 A. Yes.

5 Q. I think I am going to meet that target, Mr Gage.

6 A. Really? Marvellous.

7 Q. Pages 178 and 179, as quick as I can:

8 "Contract compliance -- 45/80/120.

9 Contract compliance is definitely working, but it
10 can always work better. Ask yourself if you are rigidly
11 adhering to these numbers each and every time they are
12 applicable [to you]."

13 Now, some of them may have been applicable to you,
14 some might not. Just help me, will you? Which ones
15 were applicable to you? The 45-minute one, 80-minute
16 one, the 120-minute one or none of them?

17 A. 45 and 80.

18 Q. So again, blatantly obvious, you may say, but here they
19 are saying, "Look, take that amount of time because if
20 you don't, two things may with follow: one, you will
21 compromise safety; and secondly, you will weaken
22 contract compliance", and that was your understanding of
23 what this was about?

24 A. Not really, to be perfectly honest with you, Mr Huggins,
25 because to me there's a conflict here. In one bit it

1 says, "Ask yourself if you are rigidly adhering to these
2 numbers", and I must admit I didn't ask myself anything,
3 and then it says, "You are entitled to 45 minutes".

4 It doesn't say you must take 45 minutes' preparation.

5 It just says you are entitled to it. So if you need it,
6 take it. What they are trying to tell people is, "Don't
7 burst a blood vessel, fall over yourself or get yourself
8 involved in potentially even an accident on the way to
9 work because that's not going to help matters.

10 Remember", it's a reminder that that was in place in the
11 contract, that if you were called out from standby, you
12 didn't have to suddenly drop the paint brush and all the
13 rest of the bits and pieces, whatever you were doing,
14 you had 45 minutes, a buffer. It's just a reminder.

15 Q. Two things come out of that. One, let's be clear about
16 this, there's no way I am suggesting to you that you
17 should have done anything which you perceived to be
18 unsafe.

19 A. Good. Right.

20 Q. But within these various provisions, there is, if I may
21 say it this way, room to move. You can be safe on half
22 an hour, you can be safe on 40 minutes, you can be safe
23 on 45 minutes; so let's just take that for the sake of
24 argument. If you are safe in any of those situation,
25 40 minutes, 45 minutes or even 30 minutes, what the

1 union is saying is play the safer margin, take the full
2 time of your entitlement, for two reasons: one, don't
3 compromise safety, and secondly, don't weaken contract
4 compliance; is that a fair way of putting it?

5 A. No, it may be a fair way for you to put it. I wouldn't
6 necessarily read it that way, no, because all I think --

7 Q. How would you understand it?

8 A. I just understand it by saying -- it's just a reminder,
9 it's a "heads up, fellas, there's a lot of
10 documentation, and it can get lost in the scheme of
11 things. Just to remind you, you are entitled to
12 45 minutes."

13 Q. I suppose, as your other colleagues have suggested,
14 there's an element of the management is going to be
15 seeing this, so it might just have the effect of
16 pressuring them to think, "Look, if they don't come to
17 the table, things are going to take longer than they
18 might otherwise have taken."

19 A. I can't speak for Cathay management, Mr Huggins. I have
20 no idea what they were thinking.

21 Q. No, it's the union I'm interested in, and the union
22 members. Was this propaganda, bluff -- words your
23 colleagues have used? I don't know, you tell me.

24 A. Possibly. I don't know.

25 Q. Was that your understanding?

1 A. No, my understanding was this: this was sent to remind
2 people that you are entitled to 45 minutes' preparation
3 time before you left home.

4 Q. Did you really need reminding of that?

5 A. I didn't, no.

6 Q. Were there some people who you thought were perhaps less
7 intelligent than you who maybe --

8 HIS LORDSHIP: He wasn't necessarily responsible for the
9 newsletter. He just received it.

10 MR HUGGINS: Your Lordship is right. Thank you. I'm sorry.

11 Let's ask this. I now can't even remember whether
12 I asked about whether you voted in favour of the
13 contract compliance resolutions.

14 HIS LORDSHIP: You haven't asked that yet.

15 MR HUGGINS: Thank you, my Lord.

16 Did you? The contract compliance resolutions that
17 I began all this with, did you vote in favour of that?

18 A. I probably did. I can't remember, but I almost --

19 Q. (Unclear words due to overspeaking)... to go through
20 this exercise. Let's come to the next step up from
21 contract compliance. When it came to the next stage,
22 which was, "Look, we have contract compliance, they are
23 still not coming to the table, we need to step it up
24 a bit" -- reference now to something beyond contract
25 compliance, limited industrial action.

1 A. Yes.

2 Q. Are you with me so far? Have I summarised it fairly?

3 A. Yes.

4 Q. And that was your understanding?

5 A. What was my --

6 Q. I want you to explain it to me a little bit more: what
7 was your understanding of the difference between the
8 existing contract compliance campaign which you had
9 already voted for, and the proposed limited industrial
10 action?

11 A. I didn't know what limited industrial action was going
12 to be.

13 Q. But what sort of thing did you understand it to be?

14 A. I didn't. It was something that I was going to be
15 advised about as and when the committee decided whatever
16 the limited industrial action was going to be.

17 Q. When you got, as you probably did, like everybody else,
18 this 16 May letter which I will now take you to, at
19 pages 196 to 198 --

20 A. Yes.

21 Q. -- Nigel Demery, 16 May, writing to his members, sending
22 an agenda which you will find at pages 194 to 195, in
23 front of the covering letter.

24 A. Yes.

25 Q. And the covering letter itself is telling you about the

1 20 June meeting coming up, EGM, extraordinary general
2 meeting.

3 A. Yes.

4 Q. He sets out why the union feel driven to do this.

5 Page 196:

6 "Consequently, we have called an EGM for the
7 following purposes:

8 1. Primarily, to encourage management to negotiate
9 in good faith and in a timely manner"; one of the
10 objectives, right?

11 A. Yes.

12 Q. "2. Management must address our rostering, remuneration
13 and benefits needs"; that's another object?

14 A. Yes.

15 Q. "3. Your committee has selected 'limited' industrial
16 action with the aim of increasing the pressure
17 incrementally and only to the minimum amount required to
18 achieve our reasonable objectives.

19 4. Industrial action is sometimes a necessary tool
20 in business. It results from failed communications and
21 unfair treatment."

22 Right?

23 A. Yes.

24 Q. So here you were being told, "We need to step up the
25 pressure", and in fairness to Mr Demery I think it's

1 only right that I remind you too that at the bottom of
2 pages 197 to 198 he is telling you that the committee
3 has evaluated all options, between doing nothing, on one
4 end of the spectrum, to embarking on all-out strike.
5 What they have concluded is:

6 "... at this stage, sensible solution lies somewhere
7 in between. We favour the use of incrementally
8 increasing pressure, thereby minimising disruption to
9 our travelling public, until we achieve our goals."

10 Again, does that reflect your understanding?

11 A. Yes.

12 Q. Thank you. But, as you say, at that stage you were
13 being asked to vote on it without knowing exactly what
14 form it was going to take; is that your position?

15 A. Yes.

16 Q. There you have the resolution in the agenda, and
17 a proxy -- what did you do?

18 A. Well, I can tell you, I would have sent in the proxy,
19 because without having my logbook with me or a copy of
20 the achieved roster at that time, I can't tell you
21 whether I was in Hong Kong or not, so obviously the
22 sensible thing was to send in the proxy in case I wasn't
23 there, but if I was there then of course the proxy would
24 have been removed and I would have voted, but I can't
25 remember whether I was there or not.

1 Q. But in either event, as before, in all probability, or
2 maybe you can even remember, you voted in favour, one
3 way or another?

4 A. I would have voted -- yes, I would have done.

5 Q. At page 211, we see -- and this is 12 June 2001, so
6 that's just eight days before the EGM on the 20th.

7 A. Mm-hmm.

8 Q. "Contract compliance continues to apply added pressure
9 to the commercial operation. Management would love you
10 to believe that it is having no effect, so that you
11 release the pressure. Do not be fooled. If increasing
12 roster instability doesn't convince you, consider the
13 amount of management time and effort spent in efforts to
14 combat [it]."

15 Again, is it likely that you would have received
16 that?

17 A. Yes.

18 Q. Again, I can't imagine for a moment that you or any of
19 your colleagues could have begun to measure the extent
20 to which it was having these effects, but you would
21 accept that the union was saying it had these effects to
22 some degree or other?

23 A. Yes.

24 Q. Page 217 -- nearly there -- 15 June, the open letter to
25 the public. We quite understand why this would have

1 been done. The union would have wanted to put something
2 out to the public. On the face of it, it is explaining
3 why it has been driven to this and saying what it's
4 going to do. Would you have seen, in all probability,
5 this letter?

6 A. Yes, I would have done.

7 Q. Page 221, "Limited Industrial Action". This is the
8 document which is issued on the same day as the vote is
9 cast. Again, is it likely you would have seen that --

10 A. Yes.

11 Q. -- although you had already cast your vote anyway?

12 A. Yes.

13 Q. At that stage -- the point that you have made and maybe
14 your colleagues have made already -- still not actually
15 setting out in terms what the limited industrial action
16 is going to be?

17 A. Yes.

18 Q. But, as it says at page 222, "Limited industrial action
19 was instituted to accelerate the process of achieving
20 that contract", a fair contract; that's the purpose
21 of it.

22 A. That's what it says.

23 Q. And that's what you understood?

24 A. That's what I understood.

25 Q. Page 224, another document that I suggest you probably

1 would have received, an update, on 27 June, "The
2 strategy is based on continuously increasing the
3 pressure on the management."

4 Again, the sort of thing you would have seen and
5 understood?

6 A. Yes.

7 Q. That just takes us to 29 June, when finally, as
8 anticipated, an indication is given to the members about
9 what the limited industrial action is going to involve.

10 A. Mmm.

11 Q. Page 226 to page 228.

12 A. Yes.

13 Q. Was this the first time, as far as you were concerned,
14 on 29 June, that finally you had some understanding as
15 to what the union had been referring to when they talked
16 about limited industrial action?

17 A. Well, I don't -- to be honest with you, I don't know
18 whether I saw it on 29 June, because, again, without
19 having my logbook in front of me, I have a sneaking
20 suspicion that I was actually flying on that day,
21 because my last trip in Cathay Pacific Airways was
22 a Vancouver trip over the weekend, the weekend before
23 Cathay Pacific Airways purportedly dismissed us, and
24 that would have been the weekend of the 29th, 30th, 1st
25 and 2nd. Without my logbook in front of me I couldn't

1 tell you whether I went to work on the 29th or the 30th,
2 so I can't actually honestly answer your question.
3 I would have seen it when I got back, for sure, but that
4 was only after I had flown.

5 Q. In any event, when you saw it, this is what you
6 understood them to have been referring to, in that
7 somewhat oblique way previously, "limited industrial
8 action"; now they are saying, "This is what we had in
9 mind." That was your understanding, was it not?

10 A. Probably, yes, even though it doesn't say "limited
11 industrial action".

12 Q. If I may respectfully suggest to you, it looks as plain
13 as a pikestaff, there wasn't anything else being
14 referred to; it had to be this.

15 A. There could have been more coming I suppose, but on
16 first reading, yes, I think that's a reasonable
17 assessment.

18 Q. Again, what it says on the face of it, for what that's
19 worth, page 226:

20 "Regrettably, 'maximum safety' will incur
21 significant delays. We anticipate that flights will
22 commonly incur delays of 15-60 minutes or more", and so
23 on, in large letters; you would have seen that?

24 A. I can see that, yes.

25 Q. I think the rest is probably not helping anymore.

1 In any event, to bring it all to a head, and in
2 simple terms, was this, like the contract compliance,
3 designed to, whether by bluff or by propaganda or by
4 whatever word you want to use, intended to pressurise
5 these guys, who have been sitting at the back of this
6 court, behind you, to come back to the table?

7 A. Probably, yes.

8 MR HUGGINS: Sorry to that taken that time, Mr Gage. I have
9 to do this; it is part of my job.

10 HIS LORDSHIP: Thank you, Mr Huggins.

11 Mr Grossman?

12 MR GROSSMAN: No questions.

13 HIS LORDSHIP: Thank you very much, Mr Gage, for come to
14 give evidence this morning. I think you can have lunch
15 now.

16 THE WITNESS: Thank you very much.

17 HIS LORDSHIP: Now, Mr Grossman, are we any better off in
18 having witnesses for this afternoon?

19 MR GROSSMAN: I am afraid not. The next witnesses are
20 coming this weekend, Mr Sweeney and Mr Neich-Buckley on
21 Monday.

22 HIS LORDSHIP: So we only have two witnesses on Monday, is
23 that the position at the moment?

24 MR GROSSMAN: I am afraid so, yes.

25 HIS LORDSHIP: And then three on Tuesday and one on

1 Thursday?

2 MR GROSSMAN: We tried to get him here in time but we simply
3 can't.

4 HIS LORDSHIP: Mr Huggins' solicitors were exploring the
5 possibility of interposing, even though we may not have
6 cleared Mr van Keulen, the defendants' witnesses,
7 because there was also some trouble about defendants'
8 witnesses being available.

9 MR HUGGINS: My Lord, I will have to bring myself up to
10 date. I thought a letter was going to be sent to
11 your Lordship's clerk indicating --

12 HIS LORDSHIP: I have seen the letter.

13 MR HUGGINS: I haven't actually seen the contents of it, but
14 I understood the thrust of it was we will have witnesses
15 available. It is just a question of logistically we may
16 have to juggle them around a bit. Mr Grossman will want
17 to know who's coming and I will give him good notice
18 about that. It is a question of whether or not we need
19 to juggle the order in order to be able to accommodate
20 them all, but can I have a word with Mr Grossman on the
21 basis that we will fill Wednesday for your Lordship.

22 HIS LORDSHIP: I am just going to make a few more
23 suggestions, possibly more radical suggestions, but they
24 are just suggestions, Mr Huggins. You may sit down.

25 I have just quickly been looking through -- I didn't

1 expect, with all credit to you, Mr Huggins, to finish so
2 early today.

3 MR HUGGINS: I have been doing my best, my Lord.

4 HIS LORDSHIP: Let me just be a little bit more radical in
5 my suggestion. There are only two witnesses on Monday,
6 so is there some way that we can make better use of
7 Monday by having some, possibly the less consequential
8 of Cathay's witnesses cross-examined on that day?

9 I will in a moment indicate who those witnesses -- who
10 might be considered that type of witness.

11 We have three witnesses on Tuesday, and if Tuesday
12 is going to go anything like this, there is the
13 possibility, let's say, that Tuesday afternoon might be
14 free. Can we have other Cathay witnesses on that day?
15 And then Wednesday, Thursday, proceeding along the lines
16 discussed earlier.

17 Which witnesses might be considered? I am just
18 going to give some names that, having had a quick look
19 through their witness statements, might be considered,
20 but these are just suggestions. Mr Huggins, you might
21 feel that you don't want to put them in until after you
22 have heard certain witnesses: Mr Nipperess, Mr Hau,
23 Mr Davies, Mr Hall, Mr Lam, Mr Dennis Leung,
24 Ms Christina Wong, Mr Hoyland and Mr Maddox.

25 Now, some of them give a list of names of pilots and

1 say, "This one, we, crew control, thought uncooperative;
2 we thought this one argumentative; we thought this one
3 obstructive", whatever. But their witness statements
4 don't really give any particulars about that; they are
5 vague on particulars, so I can't really make any
6 findings on that. So even if those witness statements
7 came in without cross-examination, it's not really going
8 to be very helpful to me if that's all they are going to
9 be saying, because without specific particulars I just
10 couldn't make any particular finding at all.

11 I think Mr Huggins, from the way he has been
12 conducting the case, I think implicitly he recognises
13 that. That's reading between the lines, the way the
14 cross-examination has taken place.

15 Mr Grossman might consider that because certain
16 witnesses, particularly in light of my remarks, you
17 might think there is really no point in cross-examining
18 them because even if their witness statements go in it
19 gets no one any further, and we may save time that way.
20 Or we may interpose them briefly, quickly, and
21 Mr Grossman deals with them as he thinks fit. Those are
22 just suggestions. You don't have to respond right now.
23 The solicitors can talk with each other and then discuss
24 what is the best way to make use of the first few days
25 of next week.

1 MR GROSSMAN: My Lord, I can say this. Actually, it is
2 a matter for my learned friend. I have no objection
3 whatsoever whether any of the defence witnesses are
4 interposed, let me say that immediately. Subject to my
5 learned friend of course telling me the order, I don't
6 care. I think the only one who might take a little
7 while, I can probably say, is Mr Rhodes.

8 HIS LORDSHIP: He is not one of those I have mentioned, and
9 I have left out Mr Tyler and Mr Chen because you might
10 want to spend more time with them.

11 MR GROSSMAN: Your Lordship will understand from my point of
12 view, I have 18 different cases to put. I'm not saying
13 it will be a long time. Most of them will be a sentence
14 or two. I am very wary, not in front of your Lordship,
15 but I am wary of having allegations made against
16 individual pilots -- like some of them say Mr Gage was
17 difficult to contact, for instance -- and I just leave
18 it. Unless your Lordship indicates to me that you are
19 not going to make a finding in that regard --

20 HIS LORDSHIP: I have given an indication, I think, that
21 unless we have specific matters, "This and this event",
22 then I'm not really sure how I can make findings.

23 The individual pilots are actually going up and
24 giving evidence now on behalf of the plaintiffs. We
25 have seen what Mr Huggins puts and what Mr Huggins

1 doesn't put, so that -- it seems to me it will be odd
2 hard, if he hasn't put any particulars that "you didn't
3 answer the phone on such and such an occasion", I don't
4 see how I can suddenly allow further and better
5 particulars suddenly to materialise in the defendants'
6 witness statements when such a case hasn't been put
7 forward in cross-examination.

8 Just reflect on that, Mr Grossman.

9 MR GROSSMAN: I understand that but of course -- I am really
10 thinking aloud here -- when these statements are put in
11 at the last minute, put in the bundle, I have to assume
12 some use will be made of them by my learned friend.

13 HIS LORDSHIP: Some fair use will be made of them, because
14 the court will not allow unfair use to be made of them.

15 MR GROSSMAN: I have to assume my learned friend --

16 HIS LORDSHIP: I'm not going to tell you how to do your job,
17 Mr Grossman. You just think about it, and you take
18 whatever decision you feel -- you run it the way you
19 think you ought to.

20 There are risks, Mr Grossman, in yourself over, how
21 do you say -- like Mr Huggins at times, when Mr Huggins
22 asks the question, he gets an unexpected answer which
23 then sometimes surprises him, possibly annoys. You
24 would face the same risk, Mr Grossman.

25 MR GROSSMAN: I understand that.

1 HIS LORDSHIP: You may prefer to leave things as they are,
2 or -- it's up to you, Mr Grossman.

3 MR GROSSMAN: Is your Lordship --

4 HIS LORDSHIP: I don't think I am going to go any further
5 than that, Mr Grossman.

6 MR GROSSMAN: I just want to make sure I understand.

7 My Lord, if I don't have to question any witnesses, I am
8 more than happy, put it that way. The sooner we get
9 this over with, the better.

10 I'm not sure whether I followed exactly what you
11 said at the beginning of this little discourse here.
12 Are you suggesting those witnesses give evidence and
13 I don't cross-examine them, or we just agree to their
14 statements going in? Was that your suggestion?

15 HIS LORDSHIP: I'm not suggesting any particular thing,
16 Mr Grossman. I am suggesting that you can consider the
17 case in the light of comments I have made and then you
18 take such steps as you think appropriate.

19 MR GROSSMAN: Very well.

20 HIS LORDSHIP: I can't really tell you how to run your job
21 and I don't think I can give any more indication than
22 I have already given, even within the confines of Civil
23 Justice Reform, where the court can pro-actively give
24 indications of a particular nature. I think I have gone
25 as far as I really should.

1 MR GROSSMAN: Thank you. Can I ask this: assuming those ten
2 witnesses or so are not called, would it still be your
3 suggestion -- it is really up to my learned friend --
4 that Mr Rhodes or the others, I suppose, one or two of
5 the others, give evidence and start Tuesday afternoon?

6 HIS LORDSHIP: That's up to the parties. I'm not
7 particularly pressing for Mr Rhodes or the key
8 witnesses, which I presume to be Mr Rhodes, Mr Tyler
9 possibly, Mr Chen possibly, give evidence before
10 Mr van Keulen gives his evidence, but the parties can
11 work out what they think is suitable.

12 MR GROSSMAN: Very well.

13 HIS LORDSHIP: I am just, shall we say, putting in a plea
14 that we use court time as efficiently as possible, so
15 that we, if there is a shortage of witnesses, maybe
16 there is a way of using the court time effectively, and
17 I'm trying to persuade counsel to do that by trying to
18 give indications, to the extent that I can, of what my
19 thinking is at the moment, having read the witness
20 statements, having seen the evidence from the plaintiffs
21 and the cross-examination in particular.

22 MR GROSSMAN: Thank you very much.

23 HIS LORDSHIP: Mr Huggins, is there anything you would like
24 to say?

25 MR HUGGINS: No, my Lord. I think the message is coming

1 across loud and clear.

2 HIS LORDSHIP: Mr Grossman?

3 MR GROSSMAN: Nothing else from us.

4 HIS LORDSHIP: We will resume then at 10 o'clock on Monday.

5 MR GROSSMAN: Thank you, my Lord.

6 (12.53 pm)

7 (The hearing adjourned until 10.00 am

8 on Monday, 12 October 2009)

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