

Tuesday, 13 October 2009

(10.02 am)

HIS LORDSHIP: I apologise, Mr Grossman, for the slightly late start. I just lost track of time.

MR GROSSMAN: Not at all. Fine. I do that frequently.

My Lord, we are ready to start. We have our three witnesses here.

Before we do so, one minor housekeeping matter.

Mr Morissette, you may know, filed a late statement. He has signed it this morning and the original will be put in your Lordship's file.

HIS LORDSHIP: Right. I have seen a statement by

Mr Morissette. Is that the one I've seen before?

MR GROSSMAN: That's the one, yes, which was not signed.

HIS LORDSHIP: It was just recently signed?

MR GROSSMAN: Yes, because he was in Canada.

HIS LORDSHIP: That's fine.

MR GROSSMAN: I call Mr Morissette.

MR PIERRE JOSEPH ROGER MORISSETTE (sworn)

Examination-in-chief by MR GROSSMAN

Q. Mr Morissette, can you be shown, please, bundle IV.

I think you will find it over there. It's in Roman letters. Do you have it? You have made three statements. The first one starts at page 1151.

Just confirm this is your statement, please. It

1 finishes at page 1164. I want to ask you one thing  
2 about it.

3 A. Yes, it is.

4 Q. That is your statement?

5 A. Correct.

6 Q. Look, please, at page 1157, in particular at  
7 paragraph 17.

8 A. Yes.

9 Q. I think you indicated to me that there is something you  
10 want to change in paragraph 17, that you think is  
11 perhaps not strictly correct.

12 A. Yes. It was probably a typing mistake. "I was,  
13 however, aware that most probably" -- instead of "MSS"  
14 here, it should read "LIA", because "MSS" meant nothing  
15 to me as I was on vacation at the time.

16 HIS LORDSHIP: "LIA", limited industrial action?

17 A. Correct. It was going to be adopted or it was going to  
18 be followed, because at that point MSS, again, meant  
19 absolutely nothing to me, so I'm not sure how the three  
20 letters "MSS" got in there instead of "LIA".

21 MR GROSSMAN: I think in the fourth line it says you were  
22 away on leave at least between 23 June and 8 July. Was  
23 23 June correct?

24 A. It's the 27th.

25 Q. The 27th? That's a mistake, is it? All right.

1           Next, would you look at page 1165. Is that also  
2           your statement? It goes to page 1177.

3   A. Yes, it is my statement.

4   Q. Just one other thing here: page 1167, near the top, it  
5           says you applied to some 97 different airline companies  
6           for employment between October 2001 and October 2005.  
7           Is that correct?

8   A. July 2001, as opposed to October 2001.

9   Q. Thank you. Lastly, would you turn to page 1330-49, to  
10          page 1330-59. Just confirm that's your latest  
11          statement.

12   A. That's correct.

13   Q. Do you adhere to what is in these statements, subject of  
14          course to the corrections you have made this morning?

15   A. Yes.

16   Q. Do you adopt these statements as your evidence-in-chief?

17   A. Yes.

18   MR GROSSMAN: Thank you.

19   HIS LORDSHIP: Thank you, Mr Grossman. Mr Huggins?

20                   Cross-examination by MR HUGGINS

21   MR HUGGINS: Thank you, my Lord.

22           Mr Morissette, dealing, first of all, with the  
23           correction you made to paragraph 17 on page 1157, the  
24           two corrections made there. The first I was going to  
25           ask you about, the leave that you got wrong there, but

1           you have since corrected that.

2    A.   That's correct.

3    Q.   It's the next sentence:

4           "I was, however, aware that most probably" -- and it  
5    was "MSS" and now is "LIA" -- "was going to be adopted  
6    and followed by aircrew officers during my  
7    aforementioned leave. I knew this because of  
8    information contained on the [union] website."

9           Could you help us with that?

10   HIS LORDSHIP:   Would you like to just be a little more  
11           specific: what was the information in the union website?

12   MR HUGGINS:   What was the information you were referring to  
13           in your statement, which is still there and is part of  
14           your sworn evidence?

15   A.   Yes. My leave began on the 27th. Between the 27th and,  
16   I believe the 3rd is when MSS began, there was some  
17   rumbling, some smoke signals, if you wish, on the  
18   website, about something beginning, either on the 1st,  
19   2nd or the 3rd. So while I was on vacation, playing and  
20   building sandcastles with my children, I knew from this  
21   website information that that was something that was  
22   going to happen, and that's all that's implied here.

23   Q.   What point, if any, were you seeking to make in this  
24           paragraph 17, when you wrote it and signed it?

25   A.   The point I was trying to make was, I was basically

1           trying to distance myself. I did not get terminated for  
2           participating in this. I was just aware something was  
3           going on but no more than that. I was not  
4           participating --

5   HIS LORDSHIP: Sorry, "participating in this" -- by "this"  
6           you mean LIA?

7   A. MSS, which really was the tool of LIA.

8   MR HUGGINS: Let's just take it slowly. When you wrote  
9           this, you say "I was trying to distance myself from  
10          this", and you have now said "this" was MSS. So that  
11          was what was in your mind when you were making this  
12          point in your statement. Have I understood that  
13          correctly?

14   A. That's correct.

15   Q. Why were you wishing to distance yourself from MSS when  
16          you were writing your statement?

17   A. It's because Tony Tyler, in the press conference that he  
18          made where he defamed us, alluded to the fact that we  
19          were holding people hostages and so on and so forth, so  
20          that entire press conference gave the illusion to the  
21          world that it was a direct consequence of participating  
22          in MSS, when in fact at the time I had no idea what MSS  
23          was.

24   Q. Well, his Lordship will make decisions about what he  
25          said and didn't say, but if that statement did not refer

1 at all to MSS, if Mr Tyler's statement did not refer to  
2 MSS, I'm afraid I don't follow what you're saying.

3 A. I don't follow what you're saying either.

4 Q. Very well.

5 HIS LORDSHIP: I think we can reserve that for argument.

6 MR HUGGINS: I think we will, my Lord.

7 Mr Morissette, when did you arrive back for these  
8 proceedings?

9 A. About 30 hours ago, after -- I just spent the last  
10 ten days working. I clocked probably 40,000 kilometres  
11 in the last ten days.

12 Q. When did you focus in on these corrections that you told  
13 us needed to be made? When did those hit you?

14 A. I would say about a week ago, when I was told that the  
15 process was being sped up. The original plan had me  
16 being here on the 27th, at the end of the month,  
17 and I had given myself a full two weeks where I was  
18 going to be at home and go through all my statements,  
19 and I have an entire box of documents; I was going to go  
20 through everything.

21 So when I was told about a week ago that I was to  
22 basically come back here as soon as my ten-day trip was  
23 done, then that's when I basically sat down and re-read  
24 every word of my statement, and I realised that in the  
25 proof-reading, the original proof-reading that took

1 place a couple of years ago, there were a few little  
2 mistakes like this.

3 Q. In particular, in discovering the mistake about when you  
4 were on leave, where did you go to correct the accuracy  
5 of --

6 A. In my logbook.

7 Q. In your logbook?

8 A. Correct.

9 Q. Can I ask you a more general question: where were you  
10 based?

11 A. At that moment, on July 9th?

12 Q. Yes.

13 A. Los Angeles.

14 Q. And where was your home?

15 A. Vancouver.

16 Q. So quite a distance, wasn't it?

17 A. Well, it's all a matter of perspective. For a pilot who  
18 flies 16-hour flights, a three-hour or  
19 two-and-a-half-hour flight down the road from Vancouver  
20 to Los Angeles is not that far.

21 Q. Your family and children, were they born at that stage,  
22 were they still there?

23 A. Yes, my wife, and then at the time I had a 12-year-old  
24 son and then a 10 and a 9-year-old daughter.

25 Q. They would have been in Vancouver?

1 A. That's correct.

2 Q. So that when you were on reserve days, you would have to  
3 travel from Vancouver to Los Angeles and stay in, what,  
4 a Travelodge or a hotel or somewhere to be on reserve  
5 day?

6 A. Yes, that's correct.

7 Q. Just help us with that. Where would you stay?

8 A. Four Points.

9 Q. I beg your pardon?

10 A. Four Points.

11 Q. Is that the name of a hotel?

12 A. Correct.

13 Q. And you would have had to pay for that? Cathay didn't  
14 pay for it?

15 A. I believe you're right.

16 Q. Just help me, would you: when would you leave home to do  
17 that?

18 A. Let's assume that my reserve began at 10 am on a Sunday;  
19 I probably travelled the night before or -- yes,  
20 probably I travelled the night before, but it depended  
21 on what time the reserve, but that's almost, I would  
22 say, irrelevant, because what would happen in those  
23 days, there was so much disruption that we would often  
24 be called ahead of that reserve period and they would  
25 say, "Instead of being on reserve on those days, you're

1 actually going to operate", so because I picked up  
2 the phone, then they would tell me, just expect to fly  
3 at, let's say, 1 or 2 o'clock pm.

4 Q. I tell you what, Mr Morissette: instead of trying to  
5 make speeches about what is relevant and what is not  
6 relevant, can we just take one question at a time?

7 As I understand it, if you were starting reserve  
8 duty at 10 am, you would have to leave your home in  
9 Vancouver the day before?

10 A. Correct.

11 Q. And you'd have to travel there -- how would you do that?

12 A. Air Canada, usually.

13 Q. Who would pay for that? You?

14 A. Yes.

15 Q. Not Cathay?

16 A. Yes, that's correct. We had the ID --

17 Q. So what was involved in you choosing to live that sort  
18 of distance from your base was that you would have to  
19 travel away from your wife and family the day before, at  
20 your own expense, and put yourself up in a hotel, at  
21 your own expense; am I right so far?

22 A. That's correct, and your question was what would  
23 motivate me to do that?

24 Q. No. I didn't ask you anything about your motivation.

25 A. I think that's how you started but --

1 Q. Forgive me.

2 HIS LORDSHIP: I think it's best, Mr Morissette, to wait for  
3 the question and then simply to answer the question.

4 A. Okay. I thought that's what I heard. Sorry.

5 HIS LORDSHIP: One of the pitfalls or one of the worst sins  
6 that witnesses often do is to anticipate the question  
7 that they think would be asked and to answer that. It's  
8 enough that you answer the precise question that  
9 Mr Huggins asks. If he wants to ask any others, he will  
10 ask them. If Mr Grossman isn't satisfied with the  
11 questions asked by Mr Huggins, Mr Grossman will ask  
12 a few more.

13 A. Okay, my Lord.

14 MR HUGGINS: So, to recap, you would have had to leave your  
15 wife and family the day before, travel at your own  
16 expense to the base, put yourself up in a hotel, at your  
17 own expense, in order to be on reserve duty, waiting for  
18 a call which might not come; that was the position, was  
19 it not?

20 A. Yes.

21 Q. Then, if the call did not come, you would have to travel  
22 back to your wife and family, again at your own  
23 expense -- is that right?

24 A. That's wrong.

25 Q. Tell me what would happen, then, if you were not called

1 on reserve duty.

2 A. The next day would be my flight, because those reserve  
3 days were put the day before the flight that I'm  
4 supposed to operate.

5 HIS LORDSHIP: So you're saying you wouldn't be flying back,  
6 because the next day --

7 A. I would be operating a Cathay airplane from Los Angeles  
8 to Hong Kong, because that's how they built the rosters  
9 and that's the way it was. The reserve came in front of  
10 when you're supposed to be working.

11 HIS LORDSHIP: Right.

12 MR HUGGINS: Just so we get a picture of what reserve day  
13 involved for you: you go to this hotel, and you couldn't  
14 really stray very far from it, could you, because you  
15 would have to wait for that call.

16 A. That's correct. What I would do normally is I would  
17 call crew control and I would ask permission, let's say,  
18 to go to the gym or go and have some lunch or -- and,  
19 I'd say more often than not, that permission would be  
20 granted. Again, usually, I'd be to able fly, I would  
21 not be sitting on reserve, because they had called me  
22 the day before, or two or three days before, to tell me  
23 I would operate, as opposed to be on standby.

24 Q. Is it fair to say you found it a little bit inconvenient  
25 to have to travel a distance from your home to your base

1 for reserve duty?

2 A. With the ID tickets that we -- it was real cheap to  
3 travel, with the ID90 tickets we were using, the  
4 airlines you can travel fairly cheaply, and the  
5 Four Points was, I don't know, probably \$65 a night, no  
6 big deal, and I can think of worse places than  
7 Los Angeles and its beaches to spend some time. So if  
8 my reserve is from, let's say, 10 am until 2 pm, which  
9 covers the portion in front of the flight, then by 3 pm  
10 I'm rollerblading along the beach, so, you know, it's  
11 not really a bad place to be, I don't think.

12 Q. Forgive me --

13 HIS LORDSHIP: So, not inconvenient?

14 A. No. It's okay.

15 HIS LORDSHIP: All right. Mr Huggins?

16 MR HUGGINS: Very well.

17 I think that was a short answer, wasn't it,

18 Mr Morissette?

19 HIS LORDSHIP: But it's interesting, it's an aberration as  
20 an short answer, particularly the part about  
21 rollerblading, Mr Huggins.

22 MR HUGGINS: Yes.

23 Mr Morissette, was there an occasion in March 2001  
24 when you said to Cathay, or your employers, that  
25 you wanted to change your reserve duty from one place to

1 another; you wanted to change it to Vancouver, right?

2 A. I have no recollection of that.

3 Q. Do you really not?

4 A. No.

5 Q. Did you not make a statement about it? Anyway, you have  
6 no recollection now. Let me not waste time.

7 A. Yes.

8 Q. Was not the position this: you found it inconvenient to  
9 do your reserve duty where you were based and you wanted  
10 to change the location of that to Vancouver, which would  
11 be closer to your wife and family? Do you have no  
12 recollection of that at all?

13 A. The first portion of your question again?

14 Q. Do you recall that having happened: you wanted to change  
15 the location of your reserve duty to Vancouver?

16 A. I don't remember that, sorry.

17 Q. Did they say no, they weren't going to agree to that?

18 A. I don't remember.

19 Q. What happened next was you called in sick.

20 A. That's news to me, so I don't remember that.

21 Q. Very well.

22 HIS LORDSHIP: This was March 2001, you say?

23 MR HUGGINS: Yes, my Lord.

24 Do you recall that between January and April 2001,  
25 you called in sick on reserve duties on three occasions?

1 A. I don't. When were the dates again?

2 Q. In January, March and April 2001.

3 A. No. No, I don't remember. I know throughout that  
4 period I was fighting through a back problem,  
5 a well-recorded back problem, and taking physiotherapy  
6 and ...

7 Q. Can I ask you this: did you actually find at that time  
8 Cathay's rostering system totally unsatisfactory, as far  
9 as you were concerned?

10 HIS LORDSHIP: To be clear, Mr Huggins, when you say "at  
11 that time", which time --

12 MR HUGGINS: 2001. Let's deal with 2001 for the time being.

13 HIS LORDSHIP: So the question, Mr Morissette, in 2001, did  
14 you find Cathay's rostering system totally  
15 unsatisfactory?

16 A. Yes.

17 MR HUGGINS: Did you make known that view to your  
18 colleagues, or did you just keep it to yourself?

19 A. It was a matter of course. Everybody was on the same  
20 wavelength. Everybody knew what was going on, so there  
21 was no need to, you know, talk much about it. It was  
22 just a matter of fact. Everybody knew what was going  
23 on.

24 Q. So is the answer "yes", "no" or "just a little bit"?

25 A. Well, just a little bit. It's -- we're all working

1 outside and it's raining, there's no need to tell  
2 someone it's raining. It's raining, everybody knows  
3 it's raining, so ...

4 Q. Very well. Let me ask you something different. Let me  
5 come to what happened after your dismissal.

6 Your evidence is, and I'm quoting you, that in the  
7 months following your dismissal, you spent nearly  
8 100 per cent of your waking hours in front of  
9 your computer screen, trying to fight your termination  
10 and trying to find alternative employment.

11 Have I summed that up correctly?

12 A. Yes.

13 Q. Mr Grossman this morning pointed to your statement where  
14 you referred to some 97 different companies that you say  
15 you applied for between dates which you have now  
16 corrected -- between July 2001, not October 2001, and  
17 October 2005. That's your evidence, is it?

18 A. That's correct.

19 Q. Have you ever provided to your solicitors, so they can  
20 provide to us, the 97 companies that you refer to?  
21 That's quite a specific number, is it not?

22 A. It's basically through email trail I was able to add up  
23 to that number, and, yes, I did.

24 Q. Did you, to your solicitors?

25 A. That's correct.

1 Q. Identifying all 97?

2 A. 38 were missing due to the fact that in 2004 I was not  
3 using web-based email and my computer crashed and so  
4 some files were lost in that email. But those that  
5 I was able to retrace was 97 minus 38.

6 Q. I've been looking in your statements to see whether  
7 we can see any reference to a company which gave jobs to  
8 a number of your fellow 49ers -- Mr Fitz-Costa, Mr Shaw,  
9 Mr Blakeney-Williams, Mr Gage, Mr Young and Mr Keene --  
10 china Airlines.

11 A. Yes.

12 Q. Did you apply for a job with --

13 A. I did.

14 Q. You did?

15 A. Correct.

16 Q. So they got jobs and you were refused?

17 A. No. When they offered me an interview, it was on  
18 a Wednesday, and only two days prior, on the Monday,  
19 I had started my type rating with Bombardier in  
20 Montreal, so I had already moved to Montreal with  
21 my family, and I started, of course, on the Monday, and  
22 then the Wednesday is when the offer for interview came.

23 Q. Have I understood it then that you would have been able  
24 to get a job with China Airlines but because you had  
25 already started with Bombardier, you decided not to

1 pursue that --

2 A. That's negative, sir. I had signed a two-year bond  
3 worth US\$25,000.

4 Q. So is the answer to my question that you could have  
5 got --

6 A. Negative. I could not have started. I could not have  
7 gone to China Airlines.

8 Q. No, because you had already accepted another commitment?

9 A. Correct, a two-year bond, yes.

10 HIS LORDSHIP: I didn't quite catch -- what were you doing  
11 with Bombardier?

12 A. I was an instructor pilot in the simulator.

13 HIS LORDSHIP: So they engaged you as an instructor pilot in  
14 the simulator?

15 A. That's correct.

16 HIS LORDSHIP: You put up a bond. What was the bond for?

17 A. Because the type rating, to become an instructor,  
18 you have to do the course as if you were a student, so  
19 you do the type rating. This type rating is valued at  
20 US\$40,000 retail. So, because they're investing in you,  
21 they want --

22 HIS LORDSHIP: This is to make sure that after your  
23 training, you don't say, "I resign" --

24 A. That's correct.

25 HIS LORDSHIP: -- or "I'm not going to Bombardier"?

1 A. Because what would happen in those days, corporate  
2 aviation was very on the up and up, and then chief  
3 pilots would come and be trained by us, and because  
4 we were the instructor and, let's say, they liked us,  
5 they would say, "Hey, come and work for me".

6 HIS LORDSHIP: I think I understand.

7 MR HUGGINS: As I understand it, you joined Bombardier  
8 Aerospace as an instructor in July 2002; is that  
9 correct?

10 A. Correct.

11 Q. How long did you stay with them?

12 A. Until October 2005, so three and a half years.

13 Q. And that's when you joined Nippon Cargo?

14 A. That's correct.

15 Q. How long were you with Nippon Cargo Airlines?

16 A. I'm still with Nippon. I have just completed a ten-day  
17 trip.

18 Q. So, since October 2005, you've been in continuous  
19 employment with Nippon Air Cargo?

20 A. Correct.

21 Q. Did you feel, therefore, that there was no need, as far  
22 as you were concerned, to make any application to any of  
23 the other airlines which we have heard offered  
24 employment to your fellow plaintiffs?

25 A. The answer is no.

1 Q. In May 2008, I think you were still working as a first  
2 officer with Nippon Air Cargo, is that right?

3 A. In May 2008, that's correct. I am still a first officer  
4 in May 2008, yes.

5 HIS LORDSHIP: Let's backtrack a little bit, Mr Huggins.

6 MR HUGGINS: Of course, my Lord.

7 HIS LORDSHIP: You asked a question, "Did you feel that  
8 there was no need", so you had a negative in your  
9 question, and then Mr Morissette answered "No". I'm not  
10 quite sure whether that means he agrees with you or  
11 whether he disagreed with you.

12 MR HUGGINS: Thank you, my Lord. That does need  
13 clarification.

14 HIS LORDSHIP: Because between your negative and  
15 his negative, I'm not quite sure where we are.

16 MR HUGGINS: It was a confusing question, Mr Morissette.  
17 Perhaps you would help his Lordship and me as to what  
18 you meant by your answer.

19 A. It's okay. I'm getting used to it.

20 HIS LORDSHIP: You're getting used to confusing answers  
21 or --

22 A. Yes.

23 HIS LORDSHIP: Can we clarify your answer, Mr Morissette.

24 A. Okay. Please clarify the question.

25 HIS LORDSHIP: When you got your job with Nippon Cargo

1 Airways in October 2005, since you got that job, did you  
2 continue applying to other airlines or did you stop?

3 A. Yes. I continued constantly looking. My homepage on  
4 my computer, when it turns up, the homepage is called  
5 "Climbto350", which is a website that shows airline jobs  
6 and corporate aviation jobs around the world. So  
7 I always, always keep a good look-out, and I have  
8 applied to certain other places, correct.

9 MR HUGGINS: In the light of that answer, I think I do need  
10 to ask you a number of other questions about  
11 the airlines which have offered jobs to your fellow  
12 plaintiffs. Did you ever apply to Singapore Airline  
13 Cargo, for example, which offered Mr Carver a job?

14 A. I did, a long time ago. I cannot remember exactly when  
15 I would have. I can't remember exactly when, but I did.

16 Q. In any event, they didn't offer you one?

17 A. That's correct.

18 Q. And Qatar Airlines, which Mr Rogers went to work for,  
19 did you apply to them?

20 A. Yes.

21 HIS LORDSHIP: Mr Huggins, are you focusing in your question  
22 on the post-October 2005 period or at any time?

23 MR HUGGINS: At any time, Mr Morissette, to begin with.

24 A. Yes.

25 Q. We can refine it, if you like. Are you saying that when

1           you applied and were declined, at that time -- let's  
2           take Qatar, for example, were you aware at any stage  
3           that Mr Rogers got a job there?

4    A.   No.  No.

5    Q.   When do you think you applied to Qatar?  He went to work  
6           in May 2004 in Dohar.

7    A.   I applied definitely in the initial year, and then after  
8           that, sporadically until now 2005.

9    Q.   Did you ever know that Mr van Keulen and Mr Crofts were  
10           both offered jobs with Korean Airlines?

11   A.   In the case of Mr van Keulen, I'm not sure that that is  
12           correct.  He was --

13   Q.   We will find out from him.

14   A.   -- offered an interview, and as far as Mr Crofts, I did  
15           not know that.

16   Q.   Did you apply to Korean?

17   A.   Yes.

18   Q.   And they turned you down?

19   A.   Yes.

20   Q.   Orient Thai, which offered Mr Blakeney-Williams and  
21           Mr Gage a job -- did you know that?

22   A.   Yes.  I found out, but again I'm not sure exactly when  
23           that is.

24   Q.   Did you apply to Orient Thai?

25   A.   I cannot remember.

1 Q. What about that specific list of 97, where 38 you  
2 couldn't trace? Do you know where that list now?

3 A. I told you earlier, I believe.

4 Q. You told me earlier about the 38 which have gone  
5 missing.

6 A. That's correct.

7 HIS LORDSHIP: I think he mentioned that he gave a list to  
8 his solicitors.

9 MR HUGGINS: Yes. Very well, my Lord. We haven't seen  
10 that.

11 Hong Kong Express Airways Limited, which offered  
12 Mr Fitz-Costa, Mr Shaw and Mr Rogers jobs: did you ever  
13 apply to Hong Kong Express Airways Limited?

14 A. No. I did not.

15 Q. Why not?

16 A. I was already working at Bombardier at the time, and  
17 when you compare both situations, Hong Kong Express did  
18 not offer any housing allowance for children, and having  
19 known the market here in Hong Kong, because we moved  
20 here initially in 1994, when we joined Cathay, with  
21 my wife and three children, we knew that it would have  
22 been impossible to live here in Hong Kong with three  
23 children. I would have been in a losing situation,  
24 money-wise, each month. So better stay put in Montreal  
25 where I have, you know, a decent job, for the moment.

1 Q. So where are you based with your job with, say,  
2 Nippon Cargo, which you have remained with for some  
3 time?

4 A. Yes. It's called a North American base. Most of  
5 my flights begin in New York or Chicago.

6 Q. So, from the point of view of your family situation,  
7 that is most agreeable for you, to be based in  
8 North America; is that a fair observation?

9 A. Yes.

10 Q. Is that one of the reasons perhaps why you haven't made  
11 applications to airlines or pushed applications to  
12 airlines outside North America?

13 A. For the time being, yes, it's definitely a criteria that  
14 a commutable job is much better than a job where I would  
15 spend eight or nine months away from my family.

16 Q. Can I go back and do an exercise I'm sure you're aware  
17 I have done with all your colleagues, and let's see what  
18 assistance you can give.

19 You have already told us in your evidence that  
20 you supported the union in its dispute with management  
21 with regard to rostering and contractual entitlements,  
22 have you not?

23 A. That's correct.

24 Q. Also in relation to the union's dispute with management  
25 about AMP, the absence management programme; you have

1           said that, too, have you not, in your evidence?

2    A.    Correct.

3    Q.    Is it fair to say, Mr Morissette, that you felt really  
4           quite strongly about those issues?

5    A.    Of course.    Yes.

6    Q.    There's nothing wrong in that, I'm not suggesting that  
7           for a moment.    I just wanted to hear your own views on  
8           the subject.

9    A.    Yes.

10   Q.    You're all entitled to very strong views.

11   HIS LORDSHIP:   I think he said "Yes", Mr Huggins.

12   MR HUGGINS:   Thank you, my Lord.

13           Was it a concern of yours, as a member of the  
14           union -- a member since June 1999, am I right?

15   A.    Correct.

16   Q.    A regular attendee at meetings, according to  
17           your evidence.

18   A.    Most of the meetings I would see through those CDs --

19   Q.    Sorry?

20   A.    Videos, CDs.

21   HIS LORDSHIP:   Most of the meetings he would see through  
22           those CDs, videos.

23   MR HUGGINS:   Forgive me, we haven't heard in any detail  
24           about those before.   Perhaps you could enlighten us  
25           about that.   What are you referring to?

1 A. I'm not sure exactly when the production of CDs began,  
2 but they were videotaped and if you missed the meeting  
3 and you were interested in it, you could watch it on  
4 a CD, and of course there would be a report through  
5 a little leaflet or a pamphlet about what happened in  
6 the meeting.

7 Q. Let's take, for example, the contract compliance  
8 campaign. Did you have a video or a DVD about that at  
9 any stage?

10 A. I cannot remember specifically about it. I just read  
11 the pamphlet.

12 Q. You read the ...?

13 A. The leaflet.

14 Q. I am sorry, Mr Morissette. I have had this trouble  
15 throughout the trial -- I'm not always hearing. Please  
16 keep your voice up. Thank you.

17 You did, however, I think your own statement says --  
18 and I can take you to it if necessary -- that you did  
19 attend some of the meetings of the union?

20 A. I remember attending two, I think they were called focus  
21 something or other, but I never attended a voting  
22 meeting. My voting was always done via proxy, so those  
23 meetings that I attended were more -- I'm not sure  
24 enough to call them focus meetings.

25 Q. Can you tell us briefly about those: what were those

1 about?

2 A. It's kind of a pep talk and rallying the troop and --

3 Q. Rallying the troops for what?

4 A. Rallying the troop.

5 Q. For what?

6 A. For support, educating people on what has been  
7 happening. You know, we were trying to negotiate. They  
8 were stonewalling. This is what we were presenting, you  
9 know, flight time limitations, ESD abuse; just a recap  
10 of the information on the general situation at the time.

11 Q. When you use the word "stonewalling", I assume you mean  
12 that --

13 A. Well --

14 Q. When you used the word "stonewalling", were you using  
15 that word in reference to the management of Cathay?

16 A. That's correct.

17 Q. And that is how you perceived their attitude?

18 A. That's correct. That's how it was relayed and  
19 understood.

20 Q. Could I ask you to help me by opening bundle X, please.

21 HIS LORDSHIP: Before we do that, you referred to ESD or ASD  
22 abuse?

23 A. "AST"? I'm sorry --

24 HIS LORDSHIP: You referred to the focus nights dealing with  
25 a pep talk on flight time limitations, and then I think

1           you said "ESD", I'm not quite sure, "abuse".

2    A.   The flight time limitations?

3    HIS LORDSHIP:  Yes, and you said something, ASD or ESD

4           abuse, and I was not quite sure what were the initials

5           that you said.

6    A.   ESD?  I'm sorry, I --

7    HIS LORDSHIP:  You can't quite remember?  That's all right.

8    MR HUGGINS:  Do you remember using the word "abuse" just

9           now?

10   A.   Yes, but --

11   Q.   We all heard that, even I.

12   A.   -- to me, it was the flight time limitations that I was  
13           talking about.

14   Q.   You were talking about the abuse of flight time  
15           limitations, were you?

16   A.   Yes, abuse of -- yes, the abuse of the flight time  
17           limitations and --

18   Q.   By the management of Cathay; this was your perception,  
19           was it?

20   HIS LORDSHIP:  I'm not entirely sure what that means,  
21           because flight time limitations -- I doesn't quite know  
22           what you mean by "flight time limitation abuse".

23   A.   The rostering practices -- the rostering practices is  
24           more accurate.

25   HIS LORDSHIP:  How would you like to put it now,

1 Mr Morissette? On the focus nights, there were pep  
2 talks, describing how management were stonewalling,  
3 rallying the troops, by doing what?

4 A. Presenting the information of the situation of what was  
5 going on. They were -- let's say we asked them to come  
6 to the table, they didn't come, you know, things of that  
7 nature.

8 HIS LORDSHIP: Mr Huggins?

9 MR HUGGINS: And they were rallying the troops to help do  
10 something about abuses, like abuses of rostering, as you  
11 put it? Do I have that right?

12 A. Yes, to inform us on what was going on at the time.

13 Q. And to seek your support to do something about it?

14 A. Yes, exactly like a politician would get in front of  
15 crowds and people and would try to gather support for  
16 a goal or a name, and the goal was always the same.  
17 It was to bring the company or the management back to  
18 the table to negotiate a fair settlement or a fair deal  
19 on what was going on at the time, which was -- you know,  
20 for me what was affecting me personally was the punitive  
21 rostering that was taking place.

22 Q. As far as you were concerned, and you are using words  
23 like "abuse", "punitive", and you've told us you felt  
24 strongly about it --

25 A. Mm-hmm.

1 Q. -- these were issues which you really wanted to see  
2 something done about?

3 A. Yes, because at the time, I was constantly tired,  
4 fatigued, and obviously, you know, we all saw that  
5 the light at the end of the tunnel would be negotiating  
6 a fair settlement, a fair deal, because, you know, since  
7 1994, you know, the workload had increased tremendously,  
8 and then we were all becoming fatigued and it was time  
9 to put an end to that.

10 Q. Could I ask you to go to bundle X, and I'll try to take  
11 you fairly briefly through a number of documents, if  
12 you'll forgive me. We can begin, for a moment, at  
13 pages 101 and 102, as I have begun so often in this  
14 case.

15 A. 101?

16 Q. Pages 101 and 102, part of a newsletter -- you will see  
17 the date of it at the bottom right-hand corner,  
18 25 September 2000 -- in which the union was reminding  
19 its members about a contract compliance resolution which  
20 had come into effect, as this document reminds you all,  
21 on 11 July 2000. You will see that in paragraph 3. Do  
22 you see this?

23 A. I see that.

24 Q. It's reminding you all that in relation to contract  
25 compliance, contactability is the key to this, I call it

1 a campaign, you can call it anything you like, but  
2 contract compliance, they're saying, contactability is  
3 the key; do you see that?

4 A. I see that.

5 Q. Was it your understanding that the union was encouraging  
6 its members to be uncontactable by the airline  
7 management and crew control on days when you had  
8 a perfectly lawful right to a rest period?

9 A. Yes.

10 Q. As far as you were concerned, given the feelings that  
11 you had about fatigue and the rest of it, you would have  
12 seen the sense in that, would you not, as far as  
13 the union is concerned, in saying to its members, "Look,  
14 boys, keep away from these people who are causing all  
15 this fatigue on your non-duty and your non-reserve  
16 days"? Is that a fair way of putting it? I'm trying to  
17 put it as fairly as I can.

18 A. I did not change in any way, shape or form how  
19 I conducted my own business.

20 Q. Forgive me, I think you're doing that which his Lordship  
21 was trying to suggest that you didn't do. Don't  
22 anticipate where you think I am coming from or what  
23 the next question might be. Just focus on --

24 A. The intent?

25 Q. -- the basics.

1 A. The intent of them, right?

2 Q. Was it your understanding --

3 A. Mm-hmm.

4 Q. -- that they were encouraging the members to be  
5 uncontactable on non-duty days and non-reserve days in  
6 order to protect you from the management pestering you  
7 to give them further assistance on those days?

8 A. Yes.

9 Q. I want to try to cut this short, really, Mr Morissette.  
10 The essence of the contract compliance campaign, as you  
11 understood it, was this, wasn't it: the airline,  
12 you thought, had been taking advantage of you and  
13 the pilots. Is that a fair starting point?

14 A. The second part of your statement is correct.

15 Q. Which is the part that's correct? Let's make sure  
16 I don't roll up too much in one sentence. Which part do  
17 you agree with and which part do you disagree with?

18 A. Yes, you're right, I agree that weren't enough of us to  
19 do the job and they were relying on us to, basically,  
20 fill in the holes.

21 HIS LORDSHIP: Mr Huggins put it as the airline was taking  
22 advantage of you and your pilots. Do you agree with  
23 that or not?

24 A. I agree with that.

25 MR HUGGINS: I'm not suggesting that I agree with

1           your perception, but that was your perception; is that  
2           correct?

3    A.   Correct.

4    Q.   Is it the position, in a nutshell, that you thought  
5           they were taking advantage of the goodwill of the pilots  
6           in the past, who were doing, as you perceived it, more  
7           than your contract required you to do? Is that a fair  
8           way of putting it?

9    A.   Yes.

10   Q.   And that the essence of the contract compliance campaign  
11          was to say, "Look, boys, we are not going to do this any  
12          more. Just stick to the contractual obligations, as  
13          you perceive them to be, and don't go any further than  
14          that". That's what it was all about, surely?

15   A.   Yes. The intent of contract compliance was to basically  
16          bring -- the objective was, again, to bring the company  
17          back to the table, negotiate a fair settlement, to make  
18          sure that we did not need to work on our days off. On  
19          our days off, we're supposed to be resting for the next  
20          flight that's coming.

21   Q.   In order to achieve that, they were encouraging their  
22          members, as we see in this document, to employ certain  
23          mechanisms -- or devices, call it what you will,  
24          "tactics" I might call it; it doesn't matter what one  
25          calls it -- to make sure you're uncontactable? That was

1 what they were asking and encouraging; am I right?

2 A. Yes.

3 Q. In relation to the contract compliance, did you vote in  
4 favour of the July 2000 resolution, the one which became  
5 effective on that date?

6 A. I cannot remember voting on that one.

7 Q. But you would have been in favour of it, from what  
8 you've been saying?

9 A. Correct. Correct.

10 Q. Is this one of those meetings where, if you did vote,  
11 you would have voted by proxy?

12 A. That's correct.

13 Q. Is this one of those meetings which you would have  
14 probably have seen on a video or DVD, or whatever  
15 you called it?

16 HIS LORDSHIP: I think he said he can't remember.

17 A. Yes, I cannot remember.

18 MR HUGGINS: Sorry. Let me move on. I think it follows  
19 from what you're saying, but I want to be clear about  
20 it, that in order to put right these wrongs, as  
21 you perceived it, the stonewalling management would need  
22 some pressure put upon them, to bring them away from  
23 their stonewalling; is that a fair way of putting it?

24 A. Yes, it's a fair way of putting it. The company --  
25 sorry, the union was definitely demanding from

1 the management to come back to the table, yes.

2 Q. How did you perceive that pressure working? How was it  
3 going to work?

4 A. It basically made absolutely no change in my life and  
5 the way I did my business, because I was already under  
6 the punitive rostering system.

7 Q. I think possibly you're going off on a tangent, if  
8 I might say so. I am interested in how you perceived  
9 this contract compliance working. How was it going to  
10 work? How was it perceived?

11 A. Well, all this, to me, was a big bluff. You know, in  
12 between the lines, this was a bluff, this "wink, wink",  
13 "nudge, nudge", sabre-rattling; they were just trying to  
14 talk the company into coming back, because, in practice,  
15 in practical terms, in real-life terms, this had no  
16 effect, and it would not change anything in my schedule  
17 because I was already working to the maximum extent.  
18 I could not have changed -- there was nothing I could  
19 change, and I can explain that, if you want.

20 Q. I will tell you what I would like your help with, and  
21 I'm just seeking your help, Mr Morissette, as I've been  
22 trying to get help from all your colleagues. Let's go  
23 to page 116 for a moment, just as an example of the kind  
24 of announcements that the union was putting out:

25 "Contract compliance update.

1 Is contract compliance working? Yes.

2 How do we know? The association office and  
3 your committee receive daily reports and proof,  
4 including examples of:

5 Extensive delays.

6 Flight cancellations, diversions and late type  
7 changes on passenger and freighter fleets.

8 Cancelled line checks [and so on and so forth]."

9 A whole host of effects that this was having.

10 A. Mm-hmm.

11 Q. Did you understand from your union that this was  
12 the announcements they were giving to you as to  
13 the effectiveness of the campaign?

14 A. They were trying to publicise something that might or  
15 might not have happened.

16 Q. Can you explain that to me, from your perception?

17 A. My perception is that there is absolutely no way for me  
18 to confirm these things that are stated are true  
19 statements. I did not know about those things. All  
20 I knew, what affected me was the punitive rostering  
21 system, and if I can explain what that was then I think  
22 it will clarify this whole area.

23 Q. You may think that, but Mr Grossman is your counsel and  
24 he's very experienced counsel. If he feels that  
25 anything more needs to be brought out, I'm sure he will

1 do that.

2 A. Okay.

3 Q. But at the moment I'm trying to keep things as short as  
4 I can. This is what the union was telling you was the  
5 effect; you were obviously not in a position to measure  
6 that yourself. Is that what you're saying?

7 A. That's correct.

8 Q. But you had no reason to doubt what your union was  
9 telling you?

10 A. Yes, I had reason to doubt.

11 Q. Did you? Why?

12 A. Because, you know, I don't take for granted everything  
13 I see in the newspaper. I don't take for granted  
14 everything that I see on these pieces of paper. I don't  
15 take, you know --

16 Q. But what was --

17 A. These specific effects, I have no way of confirming  
18 them.

19 Q. But that's two different matters, if I may say so.  
20 I think we're perhaps fencing a little.

21 HIS LORDSHIP: You asked him whether he had doubts about it.  
22 He said he had doubts.

23 MR HUGGINS: I'm going to now pursue: on what basis did you  
24 have doubts? What were your doubts based upon?

25 A. Again, the way I perceive these things, these things

1           were a bluff. That's how I perceived.

2    Q.   For whose benefit --

3    A.   They were there to rally the troop. They were there to  
4       say, "It's working", "It's working", "it's working",  
5       when I have no way of confirming it's working, and had  
6       it been working, there's no way we could have gone into  
7       LIA. There would have been no need for LIA, had this  
8       been working. That is why I was doubting these things,  
9       because I could not, with my own eyes, see any of the  
10      listed effects that are here.

11   Q.   Forgive me, I'll have to break it down a little bit.

12       When you use the word "bluff", bluffing who? Is the  
13      union bluffing its members or is the union bluffing the  
14      management or what?

15   A.   Well, the management, because they know, of course, that  
16      the second this is printed, it's going to be on  
17      Nick Rhodes' desk, and Nick Rhodes reads this and then,  
18      oh, maybe he gets scared; maybe he doesn't.

19   Q.   I see.

20   A.   All right?

21   Q.   So the bluff is towards the management, not to  
22      the members?

23   A.   That's correct.

24   Q.   So you weren't suggesting that it was to bluff you.

25       I get it now. Forgive me. We were at cross-purposes.

1           Can we move on a tiny bit. If we go over the page  
2           to page 117, announcements like this, there are several  
3           in this bundle, large letters, in black, "MISCONDUCT OF  
4           MEMBERS":

5           "On the eve of the release of names of colleagues in  
6           breach of the current contract compliance resolution,  
7           let us remind ourselves of the processes involved in any  
8           disciplinary action ..."

9           It then sets out the union's disciplinary  
10          procedures.

11          In fact, if you go to page 119, Mr Morissette,  
12          you will see, under "Current Misconduct of Members":

13          "We have three members under investigation for  
14          breaches of contract compliance. We also have two  
15          members who have been confirmed to be in breach and have  
16          been suspended for a period of 12 months."

17          Announcements of that kind. Was this, as far as  
18          you were concerned, bluff, and if so, who was being  
19          bluffed?

20        A. I was not even aware of this.

21        Q. When you say "this", are you talking about the  
22          suspension of the particular member?

23        A. Correct.

24        Q. But was it not your understanding that there were  
25          a number of announcements by the union to indicate that

1           it expected its loyal members to comply with contract  
2           compliance or else be in breach of the disciplinary  
3           rules? You were, at least, aware of that, surely?

4    A.   I was aware of that.

5    Q.   If you go over to page 120, I wonder whether you can  
6           help me with this -- it may be that I'll get more help  
7           from Mr Young, who is a committee member who is coming  
8           later, but let's see whether you can help me.

9           In the bottom right-hand corner, there's a reference  
10          to taking further steps, and reference to:

11          "Why beat a donkey when a few carrots should do the  
12          trick? However, a more direct approach may now be  
13          required. We will have to wait for the outcome of  
14          the talks in the next few weeks before we decide on  
15          'further steps'. In the meantime we can divulge that  
16          we are going to keep chopping away for however long  
17          it takes to break through. One month? That would be  
18          good. One year? Another five years?", and then in  
19          bold, "However long it takes."

20          Can you help me with this? What did you understand  
21          the further steps were going to be?

22    A.   I had no idea. I probably never even read that.

23    Q.   Why do you say that? Why do you think it's probable  
24           you didn't read that?

25    A.   Because I did not read every word of every page of every

1 leaflet.

2 Q. But that would lead to "Maybe I did, maybe I didn't".

3 Why "probably not"?

4 HIS LORDSHIP: I don't think we have to belabour this point,  
5 Mr Huggins.

6 A. I have zero recollection of --

7 MR HUGGINS: As your Lordship pleases. I won't.

8 HIS LORDSHIP: I don't think it is going to take the matter  
9 much further.

10 MR HUGGINS: I will take whatever indication comes from  
11 your Lordship.

12 Let me move on. Page 122, another indication from  
13 the union that contract compliance was impacting  
14 operations daily. That sort of thing, is this just  
15 another bit of bluff to put pressure on the management;  
16 is that what you are saying?

17 A. At the time, that's how I would have perceived it, yes.

18 Q. So, presumably, you would say the same thing about  
19 page 136:

20 "CONTRACT COMPLIANCE

21 [Contract compliance] Effectiveness.

22 Contract compliance continues to increase in its  
23 effectiveness as reserves are exhausted and the  
24 management's options wither. Multiple cancellations and  
25 extensive delays continue to increase on a weekly

1 basis."

2 You would have seen that sort of announcement, would  
3 you not?

4 A. That's correct.

5 Q. And how would you have perceived that?

6 A. The same as I said earlier. I never, with my own eyes,  
7 saw any of that, any result of that. I knew I was being  
8 called out from reserve always before my patterns. That  
9 I could see in isolation.

10 Q. I wonder whether you can help me with just one thing.  
11 I won't take long about it. Page 157, can we go to that  
12 for a moment. It's an email. I'm not suggesting for  
13 a moment that that was sent to you or shown to you by  
14 any of those who received it, but I want your help about  
15 it.

16 If you look in the middle of this page, you will see  
17 an email which came from John Findlay to people like  
18 Nigel Demery, John Warham and others on the committee.  
19 He is saying to his colleagues, in the middle of  
20 the page:

21 "... some of you may remember me saying last Monday  
22 that Rhodes had the shits when he spoke to me. Reason  
23 being that 87 officers, including 3 GC [general  
24 committee] members & JSW [John Simpson Warham] were off  
25 sick last Sunday. He half hinted that the AOA had

1 arranged it."

2 Then the bit I'm really interested in:

3 "This is twice the average and I am told today by  
4 a good source that IOC [integrated operations control]  
5 nearly imploded in trying to keep the operation going.  
6 So we now know the target to aim for."

7 Do you see that?

8 A. Yes.

9 Q. Had you ever heard, even by way of tittle-tattle amongst  
10 your colleagues, that there was a target to aim for in  
11 leading to disruption by masses of people going sick on  
12 a particular day?

13 A. Absolutely not.

14 Q. Let's go to something you have told us about, the focus  
15 discussions, or some focus discussions. Can we go to  
16 page 160, the top right-hand column, the second  
17 paragraph, a reference, this is in March 2001, to:

18 "The focus discussions were another clear indication  
19 that the membership want to apply further pressure in  
20 the near future to encourage management to meet our  
21 financial needs."

22 Do you see that?

23 A. I see that.

24 Q. Was that at least the thrust of the focus discussions  
25 that you attended?

1 A. No.

2 Q. Did you not get any impression at the focus discussions  
3 that you attended that members wanted to apply further  
4 pressure in the near future on management to meet  
5 financial needs?

6 A. To me, at the time, it was more about rostering  
7 practices.

8 Q. So, as far as you were concerned, the pressure was more  
9 about rostering practices than your financial  
10 remuneration; is that what you're saying? Otherwise  
11 you agree broadly with that proposition?

12 A. Yes, you know -- yes.

13 Q. Then I wonder whether you can help me with this:

14 "In other words, we may have to cross the boundary  
15 between simple contract compliance and limited  
16 industrial action."

17 Do you see that?

18 A. Yes, of course.

19 Q. Tell me whether you see it first. Don't anticipate what  
20 I'm going to ask.

21 A. Yes, I see it. Yes.

22 Q. I need your help on that, please: did you have any  
23 understanding here, that you can help us with, as to  
24 what the difference was likely to be between strict  
25 contract compliance and limited industrial action?

1 A. I had no idea what that meant.

2 Q. However, you did begin your evidence this morning by  
3 focusing on that part of your statement which had  
4 referred to "MSS" and what you had understood from the  
5 website, and you said, "No, no, that should have been  
6 a reference to limited industrial action". So, can you  
7 help --

8 A. This is March.

9 Q. I beg your pardon?

10 A. This is March.

11 HIS LORDSHIP: That's right. Wait for the question,  
12 Mr Morissette. We are just setting the background.  
13 Mr Huggins?

14 MR HUGGINS: Can you help us -- I'm not going to put any  
15 words into your mouth, I promise you -- I just want to  
16 understand from you what you understood to be the  
17 limited industrial action that you have now referred to  
18 in your own evidence that you saw talk about on  
19 the website.

20 A. Mm-hmm.

21 Q. Just help us with it.

22 A. Okay, I did not know what LIA was. I know what it was  
23 not. I know it was not anything -- I was not going to  
24 be asked anything that would jeopardise my job. That  
25 was the extent of my knowledge of LIA.

1 Q. I hear that aspect of it, but I do need some help as to  
2 what other understanding you had about it. I mean, what  
3 is it in general terms, in your book?

4 A. Really, it would have been pure speculation -- you know,  
5 obviously, hindsight is 20/20, now I know, but back then  
6 I had no way to know what LIA was. I did not know.

7 Q. What sort of thing did you envisage by the reference to  
8 limited industrial action?

9 A. I did not. I did not envision anything.

10 Q. Were you at least aware of the growing unrest amongst  
11 the pilots that, "Contract compliance doesn't seem to be  
12 working with these stonewalling people, we really should  
13 be stepping it up a bit"?

14 A. Yes, I knew contract compliance, or that was my best  
15 guess at that time, it was not working, as I indicated  
16 earlier. It was my guess and I guess I was proven to be  
17 right because then at some point they want to increase  
18 from something that supposedly was working but obviously  
19 was not working because they would not have requested to  
20 step it up.

21 Q. If I may say so, Mr Morissette, I entirely agree.  
22 That is obvious, but what I'm trying to understand is  
23 what you perceive to be the next step up.

24 A. It would have, you know -- I don't know what it was,  
25 I didn't know what it was, at the time. Now I know what

1 it was, but not then.

2 Q. Let's look at that same page that we are on, page 160,  
3 and drop down a few lines to a sentence that begins:

4 "They know our reasonable goals and they need to  
5 negotiate in good faith to remedy the situation. In  
6 the meantime, we recommend that you discuss amongst  
7 yourselves the many simple means we could employ should  
8 we have to take the next incremental step to increase  
9 pressure."

10 Do you see that?

11 A. I see that.

12 Q. What sort of discussion was there amongst the pilots, in  
13 general terms, as to what they felt needed to be done?

14 A. Again, I'm just going to repeat, all I knew is that  
15 I was not going to be asked to do anything that would  
16 jeopardise my job. That's really all it was. I was not  
17 part of subcommittees of tactical, of anything. I was  
18 just waiting.

19 Q. Could you go, please, to pages 196 to 198? You will see  
20 that is a covering letter -- do you have it,

21 Mr Morissette?

22 A. Page 196?

23 Q. Page 196. You will see that's the start of a covering  
24 letter dated, you will see on the third page, page 198,

25 16 May 2001.

1 A. Okay.

2 Q. You will see that it is Nigel Demery, your president,  
3 telling members about a proposed extraordinary general  
4 meeting to be heard on 20 June.

5 A. Okay.

6 Q. Nigel Demery starts by telling you all why the committee  
7 feels driven to take this action, and he, as is his job,  
8 sets out the way he perceives it. All right? That's  
9 the background. Do you see that?

10 A. I haven't read the entire thing. The last time I read  
11 that was probably eight years ago. Now, would you like  
12 me to read the whole thing or ...?

13 Q. Perhaps we can just focus shortly on what, as you say,  
14 you would have probably read eight years ago:

15 "Consequently, we have called an EGM for the  
16 following purposes... "

17 And he sets out five:

18 "1. Primarily, to encourage management to negotiate  
19 in good faith and in a timely manner."

20 You would have approved of that purpose, would you  
21 not?

22 A. Yes.

23 Q. "2. Management must address our rostering, remuneration  
24 and benefits needs."

25 You would have approved of that, would you not?

1 A. Yes.

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

6 Would you have approved of that?

7 A. Yes.

8 Q. "4. Industrial action is sometimes a necessary tool in  
9 business."

10 Again, would you have accepted that as a sensible  
11 proposition?

12 A. No. Not in Hong Kong. If we were in Quebec or a place  
13 with different labour -- you know, labour contracts,  
14 then perhaps, but not in Hong Kong.

15 Q. In any event, I can stop at 3, then. You don't agree  
16 with 4. Do you agree with 5 and 6? It perhaps doesn't  
17 matter but let's hear what you say.

18 A. 5? 5 is correct.

19 Q. And 6?

20 A. 6 is correct.

21 Q. Very well. Can I ask you to go over to page 197? At  
22 the bottom of the page, Mr Demery is telling you all:

23 "Your committee has evaluated all options between  
24 the boundaries of doing nothing, to embarking on an  
25 all-out, indefinite strike. We have concluded that, at

1           this stage, the sensible solution lies somewhere in  
2           between."

3    A.   I'm sorry, where is this?

4    Q.   The bottom of page 197, Mr Morissette, the last  
5           paragraph.

6    A.   Got it.

7    Q.   The last two lines.  Read it to yourself so I don't  
8           distract you -- and two lines over the page.

9           Have you read those?

10   A.   Yes.

11   Q.   I don't know how you read it, perhaps you can tell us,  
12           but it seems to me fairly clear that what he's saying to  
13           you all is that they are in favour of putting  
14           incremental pressure, that's more pressure than we've  
15           put already, but at the same time, and I want to be fair  
16           to Mr Demery, emphasising that they wish to minimise  
17           the degree of disruption which would be caused to  
18           the travelling public.  Was that your understanding of  
19           what was to happen?

20   A.   My understanding was exactly what is written there.

21           I was not misinterpreting it or interpreting it.  I was  
22           understanding exactly what was written there.

23   Q.   Very well.  I will move on.  Page 211, "CONTRACT  
24           COMPLIANCE", and may I give you the date again so I can  
25           show you we are moving along chronologically.  We are

1 now into June, 12 June, less than a month before you  
2 were dismissed:

3 "Contract compliance continues to apply added  
4 pressure to the commercial operation. Management would  
5 love you to believe that it is having no effect, so that  
6 you release the pressure. Do not be fooled. If  
7 increasing roster instability doesn't convince you,  
8 consider the amount of management time and effort spent  
9 in efforts to combat contract compliance."

10 Would you have seen that eight years ago?

11 A. Probably, yes.

12 Q. How would you describe this? I don't want to put words  
13 in your mouth. What was your understanding about what  
14 was going on here?

15 A. Again, we're basically trying to extract words, and the  
16 intent of this entire episode and period was to bring  
17 the company back to the table. You know, the spirit and  
18 the intent was that now each and every word like this  
19 and reading each and every paragraph and trying to --  
20 you know, I was not taking at face value each and every  
21 word in this document. I was looking for the intent.  
22 The intent was: let's bring those guys back to the  
23 table.

24 Q. Looking at that particular passage, how did you think  
25 that was going to be done?

1 A. I had no idea.

2 Q. According to the announcement, there was increasing  
3 roster instability, and also, look at the time that  
4 management is having to spend and the effort they are  
5 having to spend running around combatting all this. So  
6 that was the kind of pressure you had in mind, that was  
7 the sort of thing that was going to bring them back to  
8 the table.

9 A. All I knew again was I kept being called out on reserve  
10 one or two days before my original pattern is set to  
11 begin. That's how it affected me personally. All the  
12 rest is, you know, Nick Rhodes running around the  
13 office, I have never seen that. I would not have cared  
14 either about that, so ...

15 Q. I will move on, Mr Morissette.

16 A. Okay.

17 Q. Page 217, please. I am going to finish before  
18 his Lordship normally takes the break and I will try to  
19 do this as quickly as I can. Page 217. This was  
20 a letter which I think everyone so far thinks they have  
21 seen but I'm interested in whether you would have seen  
22 it too: an open letter from the Hong Kong Aircrew  
23 Officers Association to Hong Kong's travelling public,  
24 15 June, five days before the EGM.

25 Does this come back to you? You would have probably

1           seen this, would you not, at the time?

2    A.   I would have probably seen it but, right now, I do not  
3           recall seeing that.

4    Q.   Let's see:

5            "As professional aircrew of Hong Kong's flag  
6           carrier, Cathay Pacific Airways, we regret sincerely the  
7           need to take 'limited industrial action' and the  
8           inconvenience this will cause to you, our passengers.  
9           This motion will be voted on at an extraordinary general  
10          meeting on 20 June 2001."

11          That all meets with the sort of thing you would have  
12          known at the time, surely, or understood at the time?

13   A.   Correct.

14   Q.   Again, to be fair to you, I want to put both sides to  
15          this. He goes on to explain to the public that this is  
16          having to be done because of the unhelpful approach and  
17          refusal to negotiate constructively, referring obviously  
18          to Cathay's management. Is that the way you perceived  
19          it?

20   A.   Correct.

21   Q.   And that's what's led you all to this situation?

22   A.   Correct.

23   Q.   Let's see whether you have any more recollection now as  
24          to whether you did attend that particular meeting.

25          You think this was done by proxy, but I wonder whether,

1 if we showed you the minutes, might that help? Or have  
2 you looked at those already?

3 A. Which meeting are you talking about? The 20 --

4 Q. The EGM on 20 June, when the votes --

5 A. That's correct. A proxy. I would not have attended.

6 Q. You would not have attended. Why do you say that, out  
7 of interest?

8 A. Because, you know, if a voting meeting, I would remember  
9 that, and I don't remember being there, doing that,  
10 therefore I would have voted via proxy.

11 Q. I'm not quite clear about that answer. Others may be --

12 A. Repeat the question then.

13 HIS LORDSHIP: I think he said had he been in the meeting to  
14 vote personally, he would remember, but he doesn't have  
15 such recollection, ergo he deduces he wasn't there.

16 He can't be 100 per cent sure but that's his reasoning.

17 MR HUGGINS: My Lord, in that case, it's probably a waste of  
18 time me taking him to the minutes.

19 HIS LORDSHIP: But you voted in favour of the resolution.

20 MR HUGGINS: You voted in favour of the resolution, you have  
21 told us?

22 A. Correct.

23 Q. I won't take up any more time.

24 Can I ask you, however, to look at pages 221 and  
25 222? This is a letter which came out on the same day as

1 the vote, so it would have actually informed you of  
2 the outcome of the vote. Let's see whether you recall  
3 that. Page 221, "LIMITED INDUSTRIAL ACTION" is the  
4 heading:

5 "Ladies and Gentlemen

6 Today, you the membership voted to take limited  
7 industrial action to protect your contract by a majority  
8 of 92 per cent."

9 Does this help you to recall, you would have learnt  
10 that at the time?

11 A. Yes. I remember seeing "92 per cent".

12 Q. It says:

13 "The industrial subcommittee has been working hard  
14 to refine a strategy that will maximise pressure on  
15 management to address your concerns, while working  
16 within the bounds of your contract."

17 I think you have probably said it already, but was  
18 that your understanding of what was to happen?

19 A. I knew they were working on something else, but I had no  
20 idea what that something else was.

21 Q. But I think you have emphasised several times, if I may  
22 say so, today that what was important to you was that  
23 you would continue to act within the bounds of  
24 your contract?

25 A. Correct.

1 Q. Then in paragraph 3:

2 "We must emphasise at this time we are not asking  
3 for heroes. This next logical step of incremental  
4 pressure can be performed without placing undue risk on  
5 any union member."

6 Do you remember seeing something like that?

7 A. Yes, and of course I saw no jeopardy in this, so I was  
8 fine with that.

9 Q. What sort of risk did you think was being referred to  
10 when it said not "undue risk"?

11 MR GROSSMAN: Is it fair to ask this witness, after all  
12 these years, to try to parse a particular phrase?

13 MR HUGGINS: Mr Grossman, in deference to you, to him,  
14 I will move on.

15 HIS LORDSHIP: Because I was going to allow the question,  
16 Mr Huggins. It's up to you.

17 MR HUGGINS: I know I have been boring the pants off  
18 everybody, Mr Morissette, but since his Lordship, who is  
19 the one who may need to make findings about this --

20 HIS LORDSHIP: I'm not saying I find it relevant but I will  
21 allow the question, Mr Huggins.

22 MR HUGGINS: If your Lordship thinks it might not be ...

23 Mr Morissette, just tell me, what did you think?

24 A. And repeat -- what did I think about what? Repeat  
25 the question, please.

1 HIS LORDSHIP: I think the question is this: they are not  
2 looking for heroes.

3 A. Yes.

4 HIS LORDSHIP: "This next logical step of incremental  
5 pressure can be performed without placing undue risk on  
6 any union member."

7 A. Mm-hmm.

8 HIS LORDSHIP: What sort of risk were they talking about?

9 A. Well, I absolutely have no idea, at that point or now  
10 or ...

11 HIS LORDSHIP: Presumably, the obvious answer,  
12 Mr Morissette, would be the risk of losing one's job?

13 A. Okay, I misunderstood then. What I understood was  
14 things that I would have to do to increase the pressure.  
15 That's how I -- sorry, I misunderstood. Right.  
16 Because, as I stated previously a few times, I knew what  
17 it was not going to be. I was not going to be asked to  
18 put my career or my job in jeopardy, and that coincides  
19 with that. That resonates with me.

20 MR HUGGINS: Let me end where you began, which is in  
21 your statement, as corrected, so that I understand what  
22 you're now saying. Can we go to bundle IV, please, and  
23 I think it was paragraph -- can we go to page 1157,  
24 paragraph 17, the one to which you made the two  
25 corrections at the start of all this. This is how

1 it stands at the moment:

2 "The only knowledge that I had about the Maximum  
3 Safety Strategy ('MSS') being adopted on 3rd July came  
4 after my dismissal on 9th July. This is because such  
5 was not sent out by the [union] to its members until  
6 2nd July 2001 ..."

7 Where did that particular date come from, 2 July  
8 2001?

9 A. That's, I believe, when people were being sent these MSS  
10 documents.

11 Q. What's the basis for your belief that that's  
12 the relevant date? It's your evidence.

13 A. Again, making a statement like that at that date, at  
14 that time, you have to go and look through your records  
15 and look back, and I would have perhaps contacted  
16 a friend, "When did that begin?" -- because I have to,  
17 of course, to make the statement -- "When did that  
18 begin?" Because, at that time, I'm on vacation, so  
19 there's no way for me to know when, so I probably  
20 contacted one of the other 49ers when it was time to  
21 make my statement, "When was MSS beginning? Was it 1,  
22 2, 3 July?", you know, six years ago, at the time when  
23 I wrote that statement.

24 Q. Is that how you think this came about, this particular  
25 date?

1 A. I think so.

2 Q. Who do you think you asked?

3 A. Probably my legal team.

4 Q. So you asked your legal team when --

5 A. When MSS began.

6 Q. -- what the relevant date is?

7 A. When MSS began.

8 Q. They told you, do they, and you just signed this?

9 A. And I don't see any problem with this, yes.

10 HIS LORDSHIP: You're answering "Yes" to Mr Huggins'

11 question?

12 A. Yes.

13 MR HUGGINS: In any event, you go on:

14 "I was, however, aware that most probably MSS" --  
15 and now you have changed "MSS" to "LIA" -- "was going to  
16 be adopted and followed by aircrew officers during my  
17 aforementioned leave. I knew this because of  
18 information contained on the HKAOA website."

19 I come back to --

20 A. I was going to start -- the word, I did not say "to be  
21 adopted"; I change it to "start".

22 Q. I beg your pardon?

23 A. Instead of the three words -- instead of "be adopted" --  
24 instead of the two words "be adopted", "start"; the word  
25 "start", to begin.

1 Q. Forgive me, Mr Morissette. I didn't hear that earlier.

2 It may be my fault. If that correction was made,

3 I apologise.

4 HIS LORDSHIP: I don't think that was clear, Mr Huggins.

5 MR HUGGINS: I don't think so either.

6 In any event, that's a change you wish to make now?

7 A. I made that change when we began an hour and a half ago.

8 Q. Did you? All right. I'm trying to understand this

9 thing about the website. It's confused me all

10 throughout this trial.

11 A. Yes.

12 Q. Try to help us, what did you think you were seeing on  
13 the website?

14 A. That something had begun, something was happening.

15 There was no way for me to know. The point I'm trying

16 to make at that time is there's no way for me to know

17 what is going on, because I'm not physically in place to

18 have the details of MSS and what's going on.

19 MR HUGGINS: Mr Morissette, you referred, somewhat

20 plaintively, I think to an hour and a half ago as if

21 I have taken an undue amount of time. If I have,

22 I apologise to you, and I thank you for coming and

23 giving your evidence.

24 THE WITNESS: Thank you.

25 HIS LORDSHIP: Thank you, Mr Huggins. Mr Grossman.

1 Re-examination by MR GROSSMAN

2 MR GROSSMAN: Mr Morissette, I think you wanted to add  
3 something about punitive rostering systems. Is there  
4 anything you would like to add, that you would like to  
5 tell us?

6 A. Yes, and that's why I was trying to explain earlier that  
7 contract compliance, to me, meant absolutely nothing,  
8 because the company was already getting everything  
9 they could. They were squeezing all the juice out of me  
10 by producing a roster where I did not have to go work  
11 on -- volunteer or work on GDs. The way they were  
12 building the roster, they were building a lot of this  
13 work in front of our flights.

14 Sometimes, as an example, we could be four first  
15 officers sitting in the hotel and waiting when there's  
16 only one flight to be covered. When we come to  
17 Hong Kong, instead of 36 hours later coming back to our  
18 base, we could again sit on standby in the hotel.

19 So the roster was filled with opportunities for the  
20 company to constantly contact us. They called it  
21 defensive rostering. We, the pilots, called it punitive  
22 rostering.

23 MR GROSSMAN: Thank you.

24 HIS LORDSHIP: Thank you very much, Mr Morissette, for  
25 coming to give evidence.

1 THE WITNESS: Thank you, my Lord.

2 HIS LORDSHIP: Mr Grossman, shall we take a break at this  
3 point and resume at 11.45?

4 MR GROSSMAN: Yes.

5 HIS LORDSHIP: Your next witness will be?

6 MR GROSSMAN: Mr Young.

7 HIS LORDSHIP: Fine.

8 (11.27 am)

9 (A short adjournment)

10 (11.47 am)

11 HIS LORDSHIP: Mr Grossman.

12 MR GROSSMAN: I call Mr Young.

13 MR CRAIG MICHAEL YOUNG (sworn)

14 Examination-in-chief by MR GROSSMAN

15 MR GROSSMAN: Mr Young, would you look, please, in  
16 bundle IV. There are two statements that you have made.  
17 The first one, chronologically, is at page 1102 and goes  
18 to page 1121. Would you confirm that that is your  
19 statement?

20 A. Yes, sir.

21 Q. I think you wanted to change one matter, at page 1110.  
22 The second line starts:

23 "I was, however, aware that most probably MSS ...",  
24 et cetera.

25 Is there anything you want to say about that?

1 A. Yes. That is a bit of a misleading statement because  
2 I was on leave and I did not know what was going to be  
3 coming down the pipe, so it alludes to that I may --  
4 that I knew that MSS was going to start when, in fact,  
5 I did not. I did not know that was going to start.

6 Q. Did you know there was going to be any kind of limited  
7 industrial action?

8 A. Well, I heard something to that effect, but I don't know  
9 if I accepted that in the context of "limited industrial  
10 action". I knew something was going to happen; I just  
11 wasn't sure what.

12 Q. Thank you. Would you go back now to page 1037.  
13 This statement goes to page 1052. Would you confirm  
14 that this also is your statement?

15 A. Correct.

16 Q. Do you adhere to what you've said in these statements?

17 A. Correct.

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

19 A. I do.

20 MR GROSSMAN: Thank you.

21 HIS LORDSHIP: Mr Huggins.

22 Cross-examination by MR HUGGINS

23 MR HUGGINS: Mr Young, can we begin where you have begun, so  
24 that I understand exactly what your evidence now is --  
25 page 1110, the sentence which you have just described as

1 misleading, how would you like us to change this, if at  
2 all:

3 "I was, however, aware that most probably  
4 [something] was going to be adopted and followed by  
5 aircrew officers during my aforementioned leave."

6 What's the something you would like us to change  
7 that to?

8 A. I would like to change it from "MSS" to "something".  
9 I did not know what was going to happen but I knew  
10 there was something going to happen. What that was,  
11 I was not sure.

12 Q. Let me do that for myself:

13 "I was, however, aware that most probably something  
14 was going to be adopted and followed by aircrew officers  
15 during my aforementioned leave."

16 Is there anything else in that sentence you would  
17 like to change?

18 A. I don't believe so, no.

19 Q. Are you happy with the word "adopted" or do you want to  
20 change that as well?

21 A. No, I wouldn't change that, no.

22 Q. So what sort of thing did you think was going to be  
23 adopted?

24 HIS LORDSHIP: I think he said he had no idea.

25 A. I had no idea.

1 HIS LORDSHIP: He knew something was going to be adopted but  
2 he didn't know what.

3 MR HUGGINS: But it wasn't going to be a new canteen room?

4 A. No, sir.

5 HIS LORDSHIP: I don't think I would be too much helped by  
6 sarcasm, Mr Huggins.

7 MR HUGGINS: I'm sorry. I'm simply trying to understand --

8 HIS LORDSHIP: If you want to say that you knew that  
9 something was going to happen, something more specific,  
10 you can put it to him.

11 MR HUGGINS: Can we go back then? I'm trying to grapple  
12 with what's left in the first paragraph of  
13 your statement.

14 A. Sure.

15 Q. "The only knowledge I had about the Maximum Safety  
16 Strategy ('MSS') being adopted on 3rd July came after my  
17 dismissal on 9th July. This is because such was not  
18 sent out by the HKAOA to its members until 2nd July  
19 2001."

20 Where did the date 2 July 2001 come from?

21 A. Well, to the best of my recollection, the date came  
22 from -- I believe was either a handout or a fax or  
23 something off the website that I got on to, the HKAOA  
24 website, that said that we were adopting this MSS  
25 strategy on 2 July.

1 Q. When I take you to the documents, I think I'm going to  
2 be suggesting to you that the reference to "MSS" comes  
3 out a little bit earlier than that, so I'm trying to  
4 understand where the date 2nd July came from, but  
5 you can't help us with that?

6 A. I just did help you. I said that I believed that when  
7 I got onto the HKAOA website, that on or about 2 July,  
8 when I was on leave at home, in my office on my  
9 computer, I believe that I -- that's where I saw it, on  
10 the HKAOA website, or I had been sent a fax by the HKAOA  
11 saying that on 2 July we started MSS.

12 Q. Very well. Can I ask you some questions about what  
13 happened after you were dismissed?

14 A. Certainly.

15 Q. We have heard from some of your colleagues that when  
16 you were first dismissed, they understood, and they made  
17 reference to legal advice -- I am not going to ask you  
18 details of any legal advice you were given, I promise  
19 you -- but they understood that, in effect,  
20 they shouldn't consider applying for another job because  
21 they were still employed by Cathay and they didn't want  
22 to do anything which might be taken as acquiescence in  
23 what they called a purported termination.

24 Do you follow me?

25 A. Right up until the point where you say "purported

1 termination", could you explain that?

2 Q. I'm actually interested in whether you had  
3 any understanding of that sort which influenced you when  
4 you applied for jobs.

5 A. I don't understand your question.

6 Q. Very well.

7 HIS LORDSHIP: I think what is being said is this: a number  
8 of pilots have said after they were terminated, they  
9 didn't accept that they had been correctly terminated,  
10 hence "purported termination", therefore, they thought  
11 if they were going to start looking for jobs, indeed if  
12 they accepted other jobs, then that would mean accepting  
13 that they had been terminated. They didn't accept that  
14 they had been terminated.

15 Were you in that school of thinking? Did you say,  
16 "Well, I haven't been properly terminated, I haven't  
17 been terminated, I still regard myself as a Cathay  
18 Pacific employee and, therefore, I will not be looking  
19 for jobs because, as far as I'm concerned, I, Mr Young,  
20 I am still a Cathay Pacific employee"?

21 A. Yes, your Lordship, that makes sense to me, although  
22 I would say that I did not know the legal parameters of  
23 what Cathay Pacific could or could not do with  
24 my termination. I had hoped that I would be able to,  
25 through the situation, get back on with Cathay Pacific

1 as a pilot again.

2 HIS LORDSHIP: You say it makes sense to you, what I've just  
3 said, but at the time was your thinking, "I'm still  
4 employed by Cathay Pacific, so, as far as I'm concerned,  
5 I'm still employed so I'm not going to be looking for  
6 a job"?

7 A. No, your Lordship. At the time, I believed that  
8 I really was terminated by Cathay Pacific.

9 HIS LORDSHIP: I think that's all Mr Huggins was getting at.

10 MR HUGGINS: I am grateful.

11 What we do know from your evidence is that in  
12 late 2002, you took a job with China Airlines and,  
13 indeed, we have heard from your colleagues that a number  
14 of people were offered jobs around that time and  
15 subsequently. You took that job, in late 2002; do  
16 I have that right?

17 A. That's correct.

18 Q. But as I understand from your witness statement,  
19 you decided not to stay with China Airlines, for  
20 a number of reasons, including what you say was a lack  
21 of professionalism of other pilots; is that  
22 your evidence?

23 A. That is somewhat true, but if I might be able to expound  
24 or expand on that: I did not leave China Airlines of  
25 my own volition. I was basically on sick leave with

1 China Airlines. They wanted me to come back and work  
2 for them. My surgeon advised me not to go flying, and  
3 in the end, China Airlines just said, "Well,  
4 your contract", which they had the right to do, was to  
5 terminate my contract, and therefore I was out of work  
6 again because of my sickness.

7 HIS LORDSHIP: What was this sickness?

8 A. I had a severe gall bladder attack and I did not know at  
9 the time, your Lordship, whether it was a heart attack  
10 or a gall bladder attack. It had similar symptoms. So  
11 I wanted to be treated in my own country of Canada, to  
12 go to my own specialists and my own doctors, to find out  
13 exactly what was wrong with me.

14 HIS LORDSHIP: All right.

15 Mr Huggins.

16 MR HUGGINS: I'm glad you have helped us with that.

17 I haven't seen any sign of it in any of your witness  
18 statements. In your witness statement, if I may say so,  
19 you may have given the impression that you left  
20 China Airlines because of what you were describing as  
21 a lack of professionalism of other pilots.

22 When you were writing that witness statement, was  
23 that in the forefront of your mind, or had you forgotten  
24 about the illness aspect?

25 A. Well, no, I had not forgotten about the illness aspect.

1 It could have been an oversight on my part not to put it  
2 in there. I didn't do it for any particular reason, but  
3 I would agree with you that I was very concerned with  
4 the professionalism of some of the pilots at China  
5 Airlines, and, to be brutally frank, I was not unhappy  
6 that I was not going back to China Airlines.

7 Q. Very well. As I understand it, and please correct me if  
8 I am wrong, that was the last job with an airline that  
9 you had?

10 A. That is correct.

11 Q. Can you help me with this, then: we have had helpful  
12 evidence from your fellow plaintiffs as to various  
13 airlines which offered them jobs at various times, and  
14 I'm interested in whether or not you applied to the same  
15 airlines. For example, there's SIA Cargo, which  
16 Mr Carver got a job with. Did you apply to them?

17 A. I did apply to SIA Cargo. I went through the whole  
18 interview process and was basically told by the head of  
19 the HR department that I had a job with Singapore  
20 Airlines. Now, I'm not sure whether it was the cargo,  
21 it could have been cargo or some passenger, but it was  
22 a job with Singapore Airlines.

23 Q. When was that?

24 A. That would have been at the beginning of the year 2000  
25 [sic], somewhere around February, March, that time.

1 Q. Did you ever apply to Qatar Airways, where Mr Rogers got  
2 a job?

3 A. No, I did not.

4 Q. Did you ever apply to Nippon Cargo Airlines?

5 A. No, I did not -- excuse me, I may have applied to  
6 Nippon Cargo via the email -- their email website.

7 Q. Were you aware --

8 HIS LORDSHIP: Backtrack a little. You said you applied to  
9 Singapore Airlines at the beginning of the year?

10 A. 2002. But I was told by --

11 HIS LORDSHIP: That's all right. I just heard "2000" rather  
12 than "2002", so I was a little puzzled.

13 MR HUGGINS: In any event, that was before China Airlines  
14 gave you a job --

15 A. That's correct.

16 Q. -- in late 2002. Very well. Nippon Cargo Airlines,  
17 going back to them for a moment: did you not know from  
18 your involvement in this case and with your fellow  
19 piles, the same solicitors and all the rest of it, that  
20 Messrs Shaw, Blakeney-Williams and Morissette all got  
21 jobs with Nippon Cargo?

22 A. I knew that a number of the 49ers had gotten jobs with  
23 Nippon Cargo, yes.

24 Q. Did that not encourage you perhaps to go to them and  
25 say, "Look, you have given them a job, how about me"?

1 A. Well, as I said, I may have applied online to Nippon  
2 Cargo. There is a number of airlines that I applied to  
3 online, so, to the best of my recollection, I may have,  
4 but I'm not sure at this point in time.

5 Q. Did you learn that Mr Crofts was offered a job with  
6 Korean Airlines -- he was offered a job with Korean --

7 A. Yes, I did, and --

8 Q. Did that encourage you perhaps to try them?

9 A. I did apply with Korean Airlines.

10 Q. But he was successful and you weren't?

11 A. Obviously.

12 Q. Forgive me. I have to go through these. Orient Thai,  
13 Mr Blakeney-Williams and Mr Gage, did you learn about  
14 their successful applications?

15 A. I did not know about those two, although I did know  
16 about Mr Carver, who I was in contact with, about  
17 possible positions at Orient Thai.

18 Q. Did you apply to them, Orient Thai?

19 A. Not on an application per se, no.

20 Q. Hong Kong Express Airways Limited, where Mr Fitz-Costa,  
21 Mr Shaw and Mr Rogers were all offered job?

22 A. Not on an application, no.

23 HIS LORDSHIP: You keep saying, "Not on an application, no".  
24 How else does one apply, apart from an application?

25 A. Well, in the context of applying, your Lordship,

1           it would be making a phone call through friends that  
2           I knew and asking them, "Would it be worthwhile for me  
3           to apply at this point in time to your airline, are you  
4           hiring or not hiring", and generally if the answer was,  
5           "We are not hiring", I did not take my time to fill out  
6           a full application.

7   MR HUGGINS: Let's go back, then, to, as I was suggesting to  
8           you, the likelihood that you would have learnt from  
9           your colleagues about what successful jobs they were  
10          getting: Fitz-Costa, Shaw, Rogers with Hong Kong Express  
11          Airways Limited. Once you learned of that, are you not  
12          encouraged to then try again and say, "Look, you have  
13          given one to Fitz-Costa, you have given one to Shaw,  
14          you have given one to Rogers, how about me"?

15   A. Not with those airlines, and I did not want to apply  
16          with those airlines because at the beginning of 1999,  
17          after having lived in Hong Kong for almost ten years,  
18          just shy of ten years, I was finally based back in  
19          Canada, and that's where I wanted to stay. I was not  
20          sure that if I had accepted a job or applied and  
21          accepted a job overseas, whether I would be working  
22          overseas again.

23   Q. If you will bear with me for about three minutes, I want  
24          to do the same exercise with the other airlines.

25          Air Atlanta, where Messrs Shaw, Carver and Crofts were

1 offered, did you apply to them?

2 A. Not a formal application, no.

3 Q. Virgin Blue, where Mr Wilson got a job?

4 A. No.

5 Q. Easyjet, where Mr Dickie got a job?

6 A. No.

7 Q. Jade Cargo International, where Mr Wilson got a job?

8 A. I did apply through a pilot placement agency with  
9 Jade Cargo, yes.

10 Q. WAS Inc, where Mr Neich-Buckley, who was here yesterday,  
11 got a job?

12 A. I believe that I did apply through to WAS.

13 Q. Air Freight Express, where Mr Crofts got a job?

14 A. No.

15 Q. Astraeus Airlines, where Mr Crofts got a job at another  
16 time?

17 A. No.

18 Q. CR Airways, where Mr Fitz-Costa got a job in  
19 October 2004?

20 A. No.

21 Q. Jade Cargo, where Mr Wilson got a job?

22 A. Yes, I made enquiries and talked to one of the pilot  
23 placement agencies about Jade Cargo.

24 Q. Very well. I have done that exercise.

25 Can I wrap it up, because of course it's not just

1           your fellow plaintiffs remaining in this action from  
2           whom we have been hearing in this trial. There would  
3           have been the other 49ers, who dropped out of it in  
4           2005. Did you take the trouble of finding out from them  
5           where they successfully applied for airline jobs?

6    A.   No.

7    Q.   Why is that?

8    A.   We were all doing our own thing to try and find jobs.  
9           If the other plaintiffs, if the other 49ers had dropped  
10           out of this lawsuit, then I wasn't concerned where  
11           they were working.

12   Q.   Can I move to another matter, before I come back to  
13           my usual theme about the newsletters? Can I ask  
14           something about you, Mr Young?

15           You refer in one of your statements to how, you say,  
16           after your dismissal you became confrontational. Do you  
17           remember saying that? I can take you to it if you don't  
18           remember.

19   A.   Sure, if you wouldn't mind.

20   Q.   Do you have no recollection of saying that?

21   A.   I'm not sure about confrontational. I became a very  
22           angry individual, and if confrontation comes with anger  
23           I would have to say "yes" then.

24   Q.   It's only your word that I'm trying to seek your  
25           assistance about. If you go to bundle IV at page 1050,

1 paragraph 28, describing the effect on you of your  
2 dismissal:

3 "The effect on me has been noticeable and all  
4 negative. I have become withdrawn, confrontational ..."

5 Do you see that?

6 A. Yes, I do.

7 Q. Does that now bring back a recollection?

8 A. Yes, it does.

9 Q. Can I ask you this: would you accept that you've always  
10 had a tendency to be confrontational, or do you say that  
11 you only became confrontational as a result of being  
12 dismissed by Cathay?

13 A. I would say that I did not have a tendency to become  
14 confrontational, but you have to take every situation on  
15 its merit and it all depends on the level of  
16 confrontation. Confrontation doesn't have to be a bad  
17 thing.

18 Q. Again, I am picking this up from your own statements.  
19 You refer to an occasion when you became extremely  
20 agitated and felt that the only option was to go to  
21 a medical office. I can take you to the details in  
22 a moment, but before I do, can I ask you this: would you  
23 accept that you were someone who would, from time to  
24 time, get extremely agitated if you felt that you were  
25 being asked to do something by crew control, for

1 example, which you felt you were either not up to doing  
2 because of jetlag or fatigue or whatever it might be?

3 Would you accept that?

4 A. That I was -- I could become confrontational?

5 Q. Yes.

6 A. I recall one instance where you could say I was slightly  
7 confrontational, yes.

8 Q. So, as far as you were concerned, this would just be  
9 a one-off thing, this was not your usual character?

10 A. Generally, no. In the context of what I've written in  
11 my statement here, the confrontation was basically not  
12 outside my home. It was within my home. I was  
13 confrontational with my wife and children.

14 Q. Did you, on occasion, find yourself in such an agitated  
15 frame of mind that your doctor advised you not to sound  
16 off to crew control yourself in case you said or did  
17 something you might regret later? I'm using your own  
18 words. Do you remember that?

19 A. Yes, I remember that, but in sounding off, I was advised  
20 by the principal medical officer not to go up to  
21 the fleet office in case I might say something that  
22 I would regret, not that I was going to go up there and  
23 do it.

24 Q. In your own witness statement, you've told us about  
25 an occasion when the senior management indicated that

1 the chief pilot should counsel you. Do you remember  
2 telling us about that in your witness statement?

3 A. Yes.

4 Q. As I understand it, you say that your reaction to this  
5 was that, as far as you were concerned -- and I quote  
6 your words -- the senior management wasn't concerned  
7 with the state of the aircraft. They were more  
8 concerned that a captain could file a report that would  
9 bring them to the attention of the Hong Kong Civil  
10 Aviation Department.

11 Do you remember saying that?

12 A. If it's in my statement then I did say it.

13 Q. Again, I'd like to ask you: would you agree that  
14 you were inclined to attribute negative motivation and  
15 intent to the management of Cathay Pacific in 2001?

16 A. I sort of don't understand the question.

17 Q. Perhaps I will put it in a different way: did you at  
18 least feel very strongly that Cathay management in 2001  
19 was behaving rather badly in relation to things like  
20 rostering, contract entitlements, AMP? Was that,  
21 broadly speaking, your frame of mind?

22 A. I felt the Cathay management was trying to do  
23 the absolute best they could with the limited resources  
24 that they found themselves with.

25 Q. That's put very generously, if I may say so, Mr Young,

1 but I wonder whether that really did reflect  
2 your feelings at the time. Were you not in agreement  
3 with the union that actually you, the pilots, were being  
4 let down rather badly by the management of Cathay?

5 A. What do you mean by "let down"?

6 Q. I'm going to ask you to tell us in any shape or form, in  
7 relation to things like rostering, were you happy with  
8 the rostering arrangements that Cathay management was  
9 putting in place?

10 A. No, I was not happy with the rostering Cathay was  
11 putting in place.

12 Q. Thank you. It's fair to say, isn't it, that your fellow  
13 union members were very far from satisfied or happy with  
14 it?

15 A. I would say they were very far from satisfied with it,  
16 yes.

17 Q. It was a constant source of grievance and irritation  
18 amongst you all, was it not?

19 A. For a lot of the pilots, yes, it was.

20 Q. And you wanted something done about it?

21 A. I had hoped something would be done about it, yes.

22 Q. Would you really quibble with the suggestion that  
23 you wanted something done about it?

24 A. No. I did want something done about it, yes.

25 Q. You joined the union in October 1989?

1 A. Correct.

2 Q. Regular attendance at meetings, you have told us about  
3 in your statement?

4 A. As much of the regular meetings as I could, yes.

5 Q. But more than that, more than, for example, the last  
6 witness, you were actually a general committee member,  
7 were you not --

8 A. Yes, I was.

9 Q. -- in 1997?

10 A. I was.

11 Q. In fact, you became a principal officer of the union?

12 A. Correct.

13 Q. And accepted the position of vice-president of  
14 administration --

15 A. That is correct?

16 Q. -- from 1997 to 1998?

17 A. Correct.

18 Q. A position of some standing in the union?

19 A. Yes.

20 Q. Would you tell us a little bit about what that involved  
21 on a day-to-day basis?

22 A. I have read what my duties were as the director of  
23 administration, but at that time, the then-president,  
24 Ted Pleavin, was rearranging and reorganising the AOA  
25 itself in different ways, and I basically was down at

1 the AOA office, helping in any way, shape or form that  
2 I could with all sorts of different things. So, being  
3 the vice-president of admin, I really did not have  
4 a general task assigned to me in that context.

5 Q. What did you understand your responsibilities to be in  
6 that post?

7 A. Well, what I understood my responsibilities to be was,  
8 for example, if one of our association members had  
9 a problem with insurance or that sort of thing, that  
10 I would help get involved with either the insurance  
11 company, or if it had something to do with Cathay  
12 Pacific, get involved in that regard, to try and rectify  
13 the situation.

14 Q. In broader terms, what other responsibilities did  
15 vice-presidents of administration have?

16 A. Well, at that time I swept the office, I filed, I threw  
17 stuff in the garbage, I helped out at the front desk,  
18 I helped check out videos, because we had a video club.  
19 I answered telephones. I talked to members who came in  
20 that had queries and concerns, tried to point them in  
21 the right direction, if I didn't have the answer I put  
22 them on to somebody who may have. So I was basically  
23 a jack of all trades.

24 Q. Just to pick up on one or two of those matters. People  
25 coming in expressing concerns, members, obviously, of

1 the union, am I right? Generally speaking.

2 A. I'm sorry, could you repeat that?

3 Q. Generally speaking, members of the union coming in  
4 expressing concerns?

5 A. Regarding what?

6 Q. Well, I have to ask you. I would suggest to you, in  
7 particular, things like rostering, contractual benefits,  
8 AMP, all that kind of stuff?

9 A. Well, rostering. There was concerns about rostering,  
10 but I was not limited to helping the union members with  
11 just rostering alone.

12 Q. No, no, but what I'm suggesting to you that the inherent  
13 likelihood is, the climate being what it was at the  
14 time, one of the things that there were continual  
15 expressions of concern about was the unsatisfactory  
16 situation about rostering.

17 A. I would say that would be fair to say.

18 Q. And contractual benefits.

19 A. More rostering. In my opinion, what I was hearing was  
20 more rostering than contractual benefits.

21 Q. Never mind about the money, it's the rostering that we  
22 are concerned about, is that what you are saying?

23 A. I'm not saying that the members came in and said "Never  
24 mind about the money", but in my experience dealing with  
25 some of the members coming in, I would have to say that

1           their rostering and their family life was more of  
2           a concern, at that time, than money was. It's bound to  
3           be for any family man who's based -- and I dealt with  
4           a lot of based pilots who came over and said, "I'm not  
5           spending enough time with my family". No amount of  
6           money is going to help with that matter.

7    Q.    Can I ask you this. I think you have told us -- well,  
8           I know you have told us in your evidence but I just want  
9           to make sure this is not a mistake at all --  
10           "I supported the union in its disputes with management  
11           in relation to rostering and contractual entitlements  
12           and the absence management programme."

13                 Have I understood that correctly?

14    A.    Yes.

15    Q.    Can you help me with this. Could you just go, please,  
16           to page 120 in bundle X. If you look at the bottom  
17           right-hand paragraph on that page, this is a newsletter  
18           on 30 October 2000, in which the union is saying to its  
19           members in the bottom right-hand column, the last five  
20           or six lines:

21                 "We introduced contract compliance in 1996 ..."

22                 Do you see that?

23    A.    Yes, I do.

24    Q.    "... but management ignored the problems and now suffers  
25           with the inefficiencies. Therefore, without progress in

1 the near future, we may have no choice but to take the  
2 next logical step. Time is running out for management."

3 Do you see that?

4 A. I do see that.

5 Q. Can you help me on particular factual matters. You had  
6 been a member since 1989?

7 A. Correct.

8 Q. Do you recall that the contract compliance was  
9 introduced in 1996, as is stated here?

10 A. I would have to say I believe I do.

11 Q. This is helpful because I just want to fill in some gaps  
12 in our knowledge. We have requested certain documents  
13 which haven't come, but never mind, I will do the best  
14 with what I've got.

15 So, introduced in 1996, and are you able to confirm  
16 this: that that introduction, that contract compliance,  
17 was actually suspended in mid-July 1999 and then was  
18 re-introduced in mid-2000? Are you able to confirm  
19 that?

20 A. That sounds about right but I would only be taking  
21 a guess that -- yes, I do have some recollection of  
22 that, yes.

23 Q. I mean the precise dates don't matter, but broadly  
24 speaking, as you've said, introduced, as it says here,  
25 in 1996, but then suspended at some point a few years

1 thereafter, and I'm going to see whether you can help us  
2 with this: can you confirm that that was your  
3 understanding, that that was at a time when the union  
4 came to some sort of interim agreement with the  
5 management which enabled them to say, "Okay, chaps, we  
6 can put the pressure off for a moment and we'll suspend  
7 it?" Do you remember that, in broad terms?

8 A. To the best of my recollection, yes, I do remember some  
9 aspect of that, yes.

10 Q. That is helpful, because if we go to page 101 -- and you  
11 are the first witness that I haven't started at  
12 page 101.

13 HIS LORDSHIP: I think there was one where you started at  
14 page 87.

15 MR HUGGINS: My Lord is absolutely right, and it was  
16 page 87, of course, which has the date which predates  
17 this document. That's why we know about the earlier  
18 campaign, or how I learnt about the previous campaign.

19 What I am trying to get you to confirm -- and you  
20 have very helpfully done so, I think -- is that when we  
21 look at page 101, we see the contract compliance being  
22 brought back in, effective on 11 July 2000. Do you see  
23 that, at item 3 on that page.

24 A. Yes, I do see that.

25 Q. The union was here reminding you all that the resolution

1           which brought it back in became effective on 11 July  
2           2000 and was to remain in effect until rescinded by the  
3           membership; do you see that?

4    A.   That's what it says.

5    Q.   It was your understanding it would be rescinded in due  
6           course by the membership, presumably by a vote in  
7           a meeting?

8    A.   That's --

9    Q.   What was your understanding?

10   A.   Well, that's what it says. I believe that that would be  
11          my understanding then.

12   Q.   Thank you. Can you just help us again in broad terms.  
13          This is fairly specific here, and we can see what it  
14          says at pages 101 and 102, in particular that  
15          contactability was the key of this particular campaign.  
16          That was your understanding too, wasn't it?

17   A.   That was part of the campaign, yes.

18   Q.   Just focusing on that particular part of it for the  
19          moment -- again I think I've been through this with  
20          everybody else, but let's see if you've got any  
21          different slant on it -- as far as your understanding  
22          was concerned, the management were running on the  
23          goodwill of all of you, and in a sense you felt you were  
24          being taken advantage of in things like rostering; is  
25          that a fair way of putting it?

1 A. I don't know that I would use the term "taken advantage  
2 of". As I stated previous, management -- I honestly  
3 believe management was doing their best with the limited  
4 resources that they had available to them.

5 Q. Mr Young, why don't I just ask you to tell his Lordship  
6 in your own words what you understood contract  
7 compliance was there for. Why was it being  
8 re-introduced in July 2000, having been suspended in  
9 1999?

10 A. My understanding of it was that from about the year  
11 1994, 1995, your Lordship, there really wasn't any  
12 negotiations between -- any proper negotiations between  
13 the HKAOA and the company, and it's my understanding  
14 that we put this contract compliance back in because we  
15 had another contract imposed on us by Cathay Pacific.  
16 There really was no negotiations. It was, "Sign this  
17 contract or you're out". That was my understanding of  
18 why the membership, if you will, and this was put in  
19 there, to put contract compliance back in place because  
20 of another imposed contract on us.

21 Q. But what was this designed to achieve? What was the  
22 purpose, in broad terms? Bringing it back, what was it  
23 designed to do vis-a-vis management?

24 A. Well, as you said before when you asked me a question  
25 about the goodwill of the pilots, we had been putting

1 out our goodwill to the Nth degree, and now what  
2 I believe contract compliance, what this directive to  
3 the membership was, is to say, "Hey, work within your  
4 contract, but remember that you are a professional pilot  
5 and if you work to your contract then you will be always  
6 safe", as we always have been.

7 Q. It may be that we are at cross-purposes. I'm trying to  
8 focus on the purpose in relation to the management.  
9 I don't think there's any mystery about this. We have  
10 heard about it from your colleagues, but I just want to  
11 have confirmation from you, that as you saw it, the  
12 management are being -- I was going to say  
13 "intransigent", but I don't want to quibble about the  
14 words. The management needed a bit of a prod; is that  
15 a neutral way of putting it?

16 A. No. I would say that that is -- to my belief, that was  
17 not why contract compliance was rescinded. The reason  
18 the -- my feeling is the reason that contract compliance  
19 was rescinded is because I knew, as well as a lot of  
20 others knew, that the company was in, whatever you want  
21 to call it, negotiations with the Hong Kong AOA, and as  
22 a gesture of good faith the Hong Kong AOA rescinded the  
23 contract compliance to show the company exactly what  
24 they were missing out with our goodwill taken away, if  
25 you will, and to show them that when we rescinded the

1 contract compliance, how well we could all get along  
2 together.

3 HIS LORDSHIP: I think Mr Huggins' question is: why was  
4 contract compliance put back in?

5 A. Because we had, and I could be wrong on the dates,  
6 your Honour, but this contract compliance was put back  
7 in because another contract was imposed on us by Cathay  
8 Pacific. It was basically, "Sign or else you'll lose  
9 your job".

10 HIS LORDSHIP: What was the point of the reinstated contract  
11 compliance campaign?

12 A. To have the pilots run to the letter of their contract.

13 HIS LORDSHIP: So that ...?

14 A. So that the company would see exactly what they were  
15 missing out on.

16 HIS LORDSHIP: And as a result of the company seeing what  
17 they were missing out on, what would happen?

18 A. Well, I had hoped, your Lordship, that what would happen  
19 is that, like Rodney King says, why can't we just get  
20 along? I was very tired of being at loggerheads with  
21 the company. I had hoped that by what I perceived as  
22 being a gesture of goodwill, would bring the company  
23 back to the negotiating table.

24 HIS LORDSHIP: Back to the negotiating table to negotiate  
25 what?

1 A. Well, either -- I don't know whether -- well, I hoped it  
2 would be a new contract.

3 HIS LORDSHIP: A new contract?

4 A. A new contract, or some additions to the old contract  
5 that either -- or subtractions, as the case may be, to  
6 modify the contract.

7 HIS LORDSHIP: So, back to the table to negotiate a new  
8 contract that would bring pilots better financial  
9 benefits?

10 A. To some of our pilots on the --

11 HIS LORDSHIP: No, let's focus on you: to bring you better  
12 financial benefits?

13 A. No. No, your Honour. I never -- was never one that was  
14 caught up in the money aspect of things.

15 HIS LORDSHIP: What would it bring you, you hoped?

16 A. What would it bring me, personally? Some satisfaction  
17 that -- I loved working for Cathay Pacific, and I just  
18 hoped that it would bring me some personal satisfaction  
19 and that I didn't have to, again, be at loggerheads with  
20 my company.

21 HIS LORDSHIP: Right. Mr Huggins.

22 MR HUGGINS: I'm afraid, Mr Young, we are perhaps working at  
23 a slightly too high level of generality. I think I want  
24 to get down to the nuts and bolts of it.

25 You have been telling us about rostering, you were

1 dissatisfied with that, so it must follow, must it not,  
2 that one of the things that you wanted to see in a new  
3 contract, if it came, would be better terms as regards  
4 rostering, so you would no longer be fatigued in this  
5 way; that must be right, surely.

6 A. I hope that I had indicated that before. I was  
7 concerned with my rostering and I was also concerned  
8 with my fellow pilots' rostering as well, because as the  
9 captain of a large aircraft, and I'm sitting beside  
10 a gentleman, or a lady as the case may be, who is  
11 fatigued, and I believe that that person may not, should  
12 not have reported to work. So I was concerned about how  
13 that person's roster affected the whole flight and the  
14 flight crew and the passengers, and on and on.

15 Q. That's why, if you will forgive me for being so  
16 laborious about it, it seems to me perfectly obvious  
17 that in order to get the management from stonewalling --  
18 to use the word that your colleague has just given  
19 an hour or two ago -- one would need to put some kind of  
20 pressure to get them away from this stonewalling; isn't  
21 that --

22 A. Well, I didn't consider working within the bounds of my  
23 contract putting pressure on the company. It was my  
24 contract. On these pages it told me what I could and  
25 couldn't do, and that's what I worked to.

1 Q. But this sort of campaign, this encouragement by the  
2 union to people to make themselves non-contactable on  
3 off-duties and off-reserve days, it was obvious, was it  
4 not, because they had been, I'm going to use the word  
5 "pestered", as far as you saw it -- "pressured" is the  
6 way your colleagues have put it -- by the management and  
7 crew control to give assistance, added co-operation, on  
8 days when you were not contractually required to give  
9 it? Is that it, in a nutshell?

10 A. Well, I myself was quite contactable during my G days,  
11 and I know some other pilots who were very contactable  
12 during their G days, to help the company out.

13 Q. But you certainly saw, didn't you, that the campaign was  
14 being described by your own union, of which you were  
15 a senior officer a little bit earlier, that  
16 contactability was the key to this particular campaign?

17 A. If that's -- you know, if the union came out with this  
18 and they say that, I can't refute that.

19 Q. I'm just trying to understand what I think all your  
20 colleagues have been saying, that from your perspective  
21 this was a necessary move in order to protect yourself  
22 from being asked to give that added assistance, added  
23 co-operation, added goodwill, however you like to  
24 describe it, when you weren't contractually required to  
25 do it, and that's why the union was saying, "Make

1           yourself uncontactable"?

2    A.   Can you please elaborate on what do you mean by "protect  
3           myself?"

4    Q.   Well, protect its members who felt that they were being  
5           contacted on their off-days, on non-reserve days, and  
6           asked to do something else.

7    A.   Right.

8    Q.   And that was causing fatigue, causing frustration, to  
9           a number of you, was it not?

10   A.   Well, Mr Huggins, if you allow yourself to be  
11           contactable, then I'm assuming that in most cases, the  
12           pilots were ready and willing to do what the company  
13           asked of them.

14   Q.   But given that the union was saying, "Look, we've got to  
15           pressurise these people to realise that the rostering  
16           they were carrying out was causing problems to the  
17           pilots, causing them fatigue" --

18   A.   Yes.

19   Q.   -- so they needed to be shown, "Look, you've got to do  
20           something about this. You can't just leave it. You  
21           can't just do nothing"?

22   A.   Yes, that's fair.

23   Q.   That's what the union was doing, to try and get them to  
24           do something, put this right.

25   A.   That is part of it, but I also believe another part of

1           it was that it maybe helped the pilots focus in on the  
2           fact that -- in a lot of cases we don't really know if  
3           we are fatigued because the adrenaline gets going when  
4           you get inside -- you might be tired going to work at  
5           2 o'clock in the morning, if you are on a circadian  
6           rhythm, that you should be sleeping at 2 o'clock in  
7           the morning and you're tired, you're going to be  
8           fatigued, but the adrenaline rush that you get from  
9           being in an airliner the size of a big Airbus or a 747  
10          overcame the fact that you may have been fatigued, and  
11          it might have been only during the middle of a 15-hour  
12          flight that you realised how tired you were.

13                 I honestly believe that the union was saying -- part  
14          of what you say is true but I also believe it was  
15          getting the membership to stand back and say, "You know  
16          what? Maybe I really am fatigued, and I shouldn't be  
17          helping out when the company asks me, because I have the  
18          capability of not being a safe pilot when I get into  
19          that cockpit".

20          Q.   Just help me with this. Go to page 116. The contract  
21          compliance update. This is October 2000.

22                         "Is contract compliance working? Yes.

23                         How do we know? The association office and your  
24          committee receive daily reports and proof, including  
25          examples of:

1           Extensive delays.

2           Flight cancellations, diversions ...", a whole host  
3 of things.

4           You were aware, were you not, of those kinds of  
5 announcements being made on a regular basis by your  
6 union to its members?

7   A.   You mean, on a regular basis that over the course of  
8 a period of weeks or months I would see something that  
9 came out and said this --

10   Q.   Yes.

11   A.   -- besides here? No. No, I wasn't aware, and I don't  
12 believe, to the best of my recollection, that I ever saw  
13 anything other than what I'm seeing here,  
14 and I probably -- there is no doubt I would have read  
15 it.

16           I read a lot of the information that came from the  
17 Hong Kong AOA, as well as I read all the information  
18 that came from Cathay Pacific as well, whether they were  
19 refuting this. But I honestly believe that the  
20 Hong Kong AOA -- and I wasn't privy to any aspect of the  
21 inner workings because I was a union member but I wasn't  
22 a principal officer -- that I don't believe the HKAOA  
23 ever kept records before they said contract compliance  
24 was in force.

25           We knew that there was delays with Cathay Pacific

1 because of the rostering and the upheaval of pilots'  
2 schedules and the changing of aircraft at the last  
3 minute, so I don't believe -- and it's only my personal  
4 opinion -- that the HKAOA ever kept records like they  
5 did when they instituted contract compliance, so when it  
6 says here, "We know it's working", but I can tell you  
7 that it might have been working before contract  
8 compliance was put in place, because there were massive  
9 delays.

10 Q. Mr Young, that was quite a long answer but let's just  
11 try and break it down. What I'm suggesting to you that  
12 anyone reading this -- and you indicated you probably  
13 would have seen it -- it's plain as a pikestaff, a child  
14 of 15 can see the connection here between contract  
15 compliance and the effect. Do you not see the  
16 connection? It's staring you in the face.

17 A. First of all, I don't think a child of 15 years old  
18 knows exactly what it takes to fly an big airliner, so  
19 I think they would be looking at this and saying -- they  
20 wouldn't have a clue what it's about.

21 Q. Let's not be diverted by my perhaps --

22 HIS LORDSHIP: I think what he's saying, Mr Huggins, is that  
23 he's read this. It may be right, it may be wrong.

24 Again, it's a theme we have been hearing. He has no  
25 empirical basis, and he doesn't believe that the pilots'

1 union had any empirical basis for saying what it did.

2 MR HUGGINS: I think we may be at cross-purposes here.

3 A. (Laughter).

4 Q. Sorry?

5 A. I'm chuckling because whenever you or I am not  
6 understanding something, we are at cross-purposes, I'm  
7 hoping I am trying to make myself perfectly clear.

8 Q. Mr Young, can we look at this statement in the  
9 penultimate paragraph:

10 "Is the association satisfied with contract  
11 compliance as a lever? You, the members, voted the  
12 resolution in less than 4 months ago with a 95 per cent  
13 majority. We previously enacted contract compliance for  
14 some 3 years. Your committee is very aware of the  
15 stress and distress on all aircrew, especially on our  
16 commuters. All pilots are eager to reach a fair  
17 agreement soon and our recent survey indicates that most  
18 of us are prepared for further action, if deemed  
19 necessary. However, currently we are remaining with  
20 contract compliance as a lever to address agreement on  
21 rostering practices and discussion on outstanding  
22 benefits and remuneration issues."

23 That was your understanding, was it not, coming from  
24 your own union?

25 A. Well, you just read the paragraph.

1 Q. I read it, and asked you --

2 A. It's there, yes, that's what the union is saying.

3 Q. Is there any part of it that you didn't understand?

4 A. No, but you asked me if that was my understanding, and  
5 I said I'm reading the paragraph. I've read it so  
6 I understand it, yes.

7 Q. That's all I want. You understood it?

8 A. Yes.

9 Q. Is there any part you disagreed with?

10 A. This was something that the association, the union, put  
11 out. I had no reason to believe it or disbelieve it.  
12 I look at this and I can make my own opinion on this  
13 when it says that there was a 95 per cent majority; and  
14 you can say, well, is that a 95 per cent majority of  
15 100 per cent of the pilots or 95 per cent -- so I'm  
16 looking at this and I'm taking it just at face value.

17 HIS LORDSHIP: That's fine, Mr Young. Thank you.

18 Mr Huggins.

19 MR HUGGINS: Over the page, 117, Mr Young:

20 "On the eve of the release of names of colleagues in  
21 breach of the current contract compliance resolution,  
22 let us remind ourselves ... [about the disciplinary  
23 action involved in not complying] ..."

24 You were aware of this sort of announcement from  
25 time to time being made by the union.

1 A. I am aware of it once, and it was after the fact that --  
2 and when I say "after the fact", that I had heard that  
3 some of the pilots had been disciplined by the union.

4 Q. So you would have appreciated this was a matter taken  
5 seriously by the union?

6 A. Absolutely.

7 Q. In order to achieve the kind of goals and objectives  
8 that you've been talking about, rostering improvements  
9 and so on?

10 A. Are you referring to the union taking action against its  
11 pilots now?

12 Q. I'm talking about the indication of seriousness on their  
13 part of the need for the union to collectively band  
14 together to achieve the goals and objectives we have  
15 been talking about.

16 A. Oh yes, absolutely, yes.

17 Q. You see, I don't think any of this is very difficult,  
18 but don't -- I'll go on.

19 HIS LORDSHIP: Mr Huggins, if it's simply reading the  
20 newsletters, I can read them. I can form a view as to  
21 what plainly they are saying.

22 MR HUGGINS: As your Lordship pleases.

23 HIS LORDSHIP: I thought the whole point of embarking on  
24 this exercise, why you laboriously embarked on it with  
25 each pilot, is to find out what each pilot understood by

1 it. They may have understood all sorts of things about  
2 it, but that's the point of this exercise. I'm not  
3 entirely sure where it leaves us at the end of the day,  
4 but since we have done it so far, I'm not stopping you  
5 from conducting the same thing. But, if it's simply  
6 reading this and saying, "You understand that's what it  
7 says", I can read it and I think I can understand what  
8 it says.

9 MR HUGGINS: As your Lordship pleases.

10 In any event, I don't know whether, amongst my  
11 laborious questions, I forgot to ask: did you vote in  
12 favour of the contract compliance in July, whatever it  
13 was, 2000?

14 A. Yes, I did.

15 Q. Did there come a point -- let's look at page 160 in this  
16 bundle -- where you would have understood, the second  
17 paragraph down on the right, that the union was saying  
18 that there was a feedback from its members, from the  
19 focus discussions, that they "want to apply further  
20 pressure in the near future to encourage management to  
21 meet our financial needs"?

22 A. I'm sorry, Mr Huggins, I'm not quite with you there.  
23 Could you -- do you mean the second paragraph starting  
24 with "The focus discussions were another clear",  
25 et cetera, et cetera?

1 Q. Just so.

2 A. All right.

3 Q. Was it your understanding that that's what the  
4 membership's feeling was at that time, "We need to do  
5 something more, we're not getting these people to give  
6 us what we need"?

7 A. Was it my understanding that we needed to do more?

8 Q. Yes.

9 A. Again, I can only go by what it says here, and it says  
10 that -- I need to take time to read this to form  
11 an opinion, but --

12 HIS LORDSHIP: Let's change the question around: at the  
13 time, in March 2001, was it your feeling that contract  
14 compliance, as a campaign, was not working to bring  
15 management back to the negotiating table to talk about  
16 a new contract?

17 It's a simple question, Mr Young. It's either yes,  
18 it was your feeling, or no, it was not your feeling, or  
19 you have no idea.

20 A. Okay. Yes, it was my feeling that we needed to do more.

21 HIS LORDSHIP: Right. And what exactly did you feel had to  
22 be done? What more had to be done?

23 A. I can only give you a personal opinion.

24 HIS LORDSHIP: I think that's all Mr Huggins is interested  
25 in.

1 A. To be honest, I did not know what more could be done.

2 I really did not know what more could be done.

3 I thought that we were doing enough, and --

4 HIS LORDSHIP: Just so that no one is in any doubt, you said  
5 you "thought we were doing enough"; what is it exactly  
6 that "we", "you" were doing, that you say you were doing  
7 enough of, and you didn't quite know, to be honest, what  
8 more needed to be done? What was it that you were doing  
9 "enough" of?

10 A. Your Lordship, if I can relate this to the contract  
11 compliance --

12 HIS LORDSHIP: Never mind the contract compliance, just say,  
13 at the time, what was your feeling?

14 A. Well, we were working to our contract, and I felt that  
15 that's -- because we were working to the maximum effort  
16 of our contract, or within the bounds of our contract,  
17 I really had no idea what more could be done.

18 HIS LORDSHIP: You were already working to the strict letter  
19 of the contract, what more could be done?

20 A. Yes. There's conjecture. You could say that there was  
21 all sorts of things to take it way over the top, but  
22 I don't believe that that would have been the intention  
23 of what the union or what the pilots really wanted to go  
24 for.

25 MR HUGGINS: Sorry, I didn't understand that last answer.

1           There were what?

2   HIS LORDSHIP:  He said there was talk, there was conjecture,  
3           and then pick it up from there, Mr Young, what exactly  
4           were you saying?  There was conjecture?

5   A.  I felt that we were working within our contract, and if  
6           in this the HKAOA says that we needed to do a little bit  
7           more, I did not know what more that we could do, and  
8           most pilots were unsure about what more they could do.

9   MR HUGGINS:  But something more, anyway; one step up,  
10          incremental pressure?

11  A.  (Witness nodded).

12  Q.  Yes?

13  HIS LORDSHIP:  You nodded your head; that's a "yes", I  
14          think.

15  A.  Yes.

16  MR HUGGINS:  Some of your colleagues, I don't know what word  
17          you use, have suggested that some of this was  
18          propaganda, bluff?  Do you go along with that, their  
19          evidence about that, or do you have a different word for  
20          it?

21  A.  That this was propaganda from the --

22  Q.  An element of it, to pressurise the management, who  
23          would see this stuff and think, "You know, we don't know  
24          what limited industrial action it is going to be but  
25          something's coming" --

1 A. Right.

2 Q. -- "which might cause disruption to the operations; we'd  
3 better do something". That's what your colleagues have  
4 been saying. Do you really say that's not right?

5 A. I cannot speak for my colleagues --

6 Q. I'm not asking you --

7 A. -- I can only speak for myself, and what I will say is  
8 I didn't look at it as propaganda, because I knew that  
9 not only would I be reading it, but the management would  
10 be reading it as well and they could make their own  
11 opinion as to whether it was propaganda or not, just the  
12 same as I read all the management information that came  
13 out and made my own informed decision as to whether  
14 I chose to believe what was in the newsletters and in  
15 the information out from the management.

16 Q. But the purpose and intent was to prompt the management  
17 to think, "Look, we'd better do something, or else ..."?

18 A. Mr Huggins, there's a tonne of paper here that I -- you  
19 know, if the intent was to just put propaganda on  
20 a piece of paper, with all the paper here we would have  
21 had the company back to the negotiating table months  
22 before.

23 Q. As far as you were concerned, there was more reality; it  
24 wasn't just bluff, this was what was going to happen?

25 A. Yes, if the management -- and I can't speak for

1 management opinion, but if I put myself in a management  
2 position I might look at this and say "Yes, the AOA is  
3 saying that we need to do something a little bit more,  
4 yes".

5 Q. Okay. Pages 196, 197, 198. 16 May, we see the date on  
6 the third page at page 198, a letter from Nigel Demery  
7 to you all, talking about a forthcoming extraordinary  
8 general meeting.

9 A. Is that on page 198?

10 Q. Page 198 is the date, as I have suggested, 15 May.

11 I didn't want you to be misled by the heading which is  
12 20 June.

13 A. Okay.

14 Q. So 20 June is the date of the meeting. 16 May is the  
15 letter, telling you what is coming up. All right? Are  
16 you with me?

17 A. Yes.

18 Q. With that letter comes the agenda and a proxy form which  
19 you will see at pages 194 and 195. Just focus on it for  
20 the moment.

21 A. Yes. I am looking at that, yes.

22 Q. So the covering letter at page 196 explains to you all  
23 Mr Demery's understanding as to why something has to be  
24 done. Surely there is no dispute about that; you would  
25 agree with that?

1 A. I would have to read this again.

2 Q. Well, do.

3 A. Right. Mr Demery does say that yes, he takes no  
4 pleasure in this, and I believe that because I know  
5 Mr Demery, and --

6 Q. He feels driven to it basically by the attitude of the  
7 management; is that a fair --

8 A. No, it's my opinion that he was driven to this because  
9 of the concerns of the members.

10 Q. Do you think those were any different from -- did I say  
11 "management"?

12 A. Yes.

13 Q. I'm so sorry. I'm with you. My fault. I apologise.

14 "Consequently, we have called an EGM for the  
15 following purposes."

16 He sets out those purposes. You would have  
17 understood that at the time?

18 A. Yes.

19 Q. In particular, I am just going to focus on 3, to get  
20 your assistance:

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

25 Did you understand that to be one of the purposes of

1 the vote?

2 A. Yes.

3 Q. To cut it as short as I can, at page 194 there's the  
4 agenda, the resolution, the proxy. Did you go to the  
5 meeting or did you vote by proxy? Or were you on  
6 holiday --

7 A. I have no recollection of being at the meeting. I may  
8 have been there. If I wasn't at the meeting I most  
9 certainly would have voted by proxy.

10 Q. Given the feelings and the need for your support, you  
11 would have voted in favour of it.

12 A. Yes.

13 Q. Even though at that time you weren't sure what form the  
14 limited industrial action would take?

15 A. That is correct. I had no idea what form the limited  
16 industrial action would be.

17 Q. In the light of that, it's probably a waste of my  
18 time -- and the court's time, more importantly -- of  
19 putting the minutes of the meeting because you don't  
20 think you would have been there?

21 A. Well --

22 HIS LORDSHIP: He's not sure.

23 MR HUGGINS: You're not sure. I suppose that's right. It  
24 could be that you voted by proxy on the basis that you  
25 might not be there and then, as it turned out, you were

1           there and would have gone along?

2    A.   If I had the opportunity to go, yes, and I would have  
3       withdrawn my proxy and I would have voted personally at  
4       the meeting, yes.

5    Q.   What would have been the need to do that if you have  
6       already sent a support vote? Why would you need to  
7       withdraw it?

8    A.   I withdrew my proxy because I was present at the  
9       meeting.

10   Q.   Let's just see whether the minutes prompt any  
11       recollection. Bundle IX, page 2896, the minutes of that  
12       meeting on 20 June. It begins:

13           "1. To approve the minutes of the EGM of 19th April  
14       2001."

15           Then it goes on to deal with the resolution which  
16       was to be voted on at the meeting.

17           It may help you, I hope it will, at page 2898,  
18       there's a record there of "Discussion and vote on the  
19       limited industrial action motion". There's the  
20       president saying, "We need the support of everybody",  
21       saying what the resolution is going to be. Somebody  
22       from the floor, you see towards the bottom, says:

23           "There have been lots of rumours about what limited  
24       action is -- I would like to know what it entails."

25           Were you one of those who were interested in what it

1           entailed?

2    A.   That would have been of interest to me, yes.

3    Q.   Do you remember, does this bring back a recollection of  
4           being there and people saying, "Look, what is the  
5           limited action we are asked to be voting on?"

6    A.   Well, I would only have to speculate on this, but  
7           because I was one that did not know what limited  
8           industrial action was, I am going to assume, maybe  
9           wrongly so, but I'm going to assume that a lot of others  
10          did not know what limited industrial action is, what we  
11          needed to do.

12                 So this is -- somebody can ask, but that -- to me it  
13                 doesn't necessarily mean that the principal officers or  
14                 the gentleman or lady who is up on the stage is going to  
15                 tell you what the next series of actions is.

16   Q.   Indeed, the president goes on to say:

17                 "What is limited industrial action? The first thing  
18                 is that it is not voluntary. If we vote for this today,  
19                 on 1st July you have to go in 100 per cent committed,  
20                 100 per cent AOA."

21                 Do you remember him indicating that?

22   A.   No, I don't. I'm reading it here, if it's the minutes  
23           of the meeting I will take it as fact, but I do not  
24           specifically recall talking about that at this meeting,  
25           if in fact I was there.

1 Q. Certainly you understood, didn't you, what it also goes  
2 on to say, that one thing it is not, it's not going to  
3 be an all-out strike; that's not what people were voting  
4 on. You were voting on something short of that.

5 A. Does it say that in here?

6 Q. Yes.

7 A. Can you point me to it?

8 Q. Page 2898.

9 HIS LORDSHIP: The third line from the bottom.

10 A. Okay. I see it, yes, thank you.

11 MR HUGGINS: "Limited industrial action is not a strike.

12 Your committee's view is not 'all on or all off', it is  
13 incrementally increasing pressure. If we had wanted  
14 strike action we would have held a strike ballot. We  
15 will publish plans on 29th June and believe when you  
16 read them you will feel you are well trained."

17 Do you see that?

18 A. Yes, I do.

19 Q. Whether you were there at the meeting or not, it was  
20 your understanding, wasn't it, that whatever form the  
21 limited action was going to take, it wasn't going to be  
22 an all-out strike?

23 A. Absolutely, which I thought was a very reasonable stance  
24 to take.

25 Q. So whatever it was, it was short of that?

1 A. Yes. It could have been much short of that.

2 Q. As he says here, something between doing nothing and  
3 an all-out strike; was that your understanding?

4 A. Well, if you put it in those parameters, I mean, yes, it  
5 would have to be, unless you put "strike" in the middle  
6 and then have something else a little farther on like  
7 slashing airplane tyres, I don't know.

8 HIS LORDSHIP: I think it works both ways. Mr Young, I'm  
9 not too much helped either by sarcasm from the witness  
10 or sarcasm from counsel.

11 A. I'm sorry.

12 MR HUGGINS: So was it your understanding that perhaps for  
13 tactical reasons, they were not going to spell out just  
14 yet what form the limited action was going to take, but  
15 it was going to come out on 29 June or thereabouts? It  
16 says so there, but was that your understanding, in any  
17 event?

18 A. It may have been, it may not have been. I don't have  
19 any recollection of that, but again I will read it here  
20 and take that at face value, that something was going to  
21 happen, yes.

22 Q. But surely, would you not agree that it's inherently  
23 likely that you would have been interested -- I know  
24 it's a long time ago -- in what it was that --

25 A. I absolutely would have been.

1 Q. Had you been looking out for what it was?

2 A. Well, I knew that according to this, and I felt, you  
3 know, from reading this and trying to refresh my memory,  
4 that all good things come in due time.

5 Q. So you would have been looking out for it?

6 A. I would have.

7 Q. We know that in fact, you went off on leave. I'm going  
8 to suggest to you it was actually 25 June; I think your  
9 statement said you were on leave from at least 23 June.  
10 Have you actually checked that?

11 A. No, I have not.

12 Q. Is it possible that you might have made another mistake  
13 there in that statement, that in fact you were on leave  
14 from 25 June to 9 July?

15 A. Well, may I ask you a question then what you think  
16 I made a mistake on, previous?

17 Q. Well, insofar as your existing statement -- I think the  
18 reference is bundle IV, page 1110 -- suggests that you  
19 were on leave from at least 23 June --

20 A. Yes.

21 Q. -- I'm suggesting to you that it might have been  
22 a couple of days later.

23 A. I would agree with that. It could have been a couple of  
24 days earlier, could have been a couple of days later.  
25 I have not gone to my logbook to check it out.

1 Q. In any event, what we do have, or what we had until this  
2 morning, was you saying, "I was, however, aware that  
3 most probably MSS" -- and now that's crossed out and  
4 it's "something" --

5 A. Yes.

6 Q. -- "was going to be adopted and followed by aircrew  
7 officers during my aforementioned leave", and then you  
8 went on to refer to the website.

9 A. Yes.

10 Q. So does it follow that whatever the website is -- that  
11 I'm still intrigued to find out about -- that was  
12 something you would have been looking at between the  
13 vote that you gave on the 20th, and the days that  
14 followed while you were on leave, or was it before you  
15 went on leave, or don't you know?

16 A. I'm kind of getting confused. Will you ask me one  
17 question at a time and I will answer it.

18 Q. Of course. Quite right. The 20th, meeting, vote in  
19 favour.

20 A. Yes.

21 Q. 21st, 22nd, 23rd, 24th. Then you go on leave on the  
22 25th, approximately. I am putting to you.

23 A. Approximately, let's say approximately the 25th.

24 Q. So logically, if you saw something on the website, it  
25 was either in those days before you went on leave or in

1 the days while you were on leave, 25th, 26th, 27th,  
2 28th, and so on. Does that follow or not?

3 A. Yes, it would have been -- to clarify, it would have  
4 been on the days after leave but I was on leave so  
5 I didn't necessarily check my emails or any information  
6 or go to the HKAOA website on a regular basis.

7 Q. Very well.

8 A. I wanted to get away and just relax and be with my  
9 family on leave.

10 Q. Just a couple of other things, because I see the time  
11 and I think it would help everyone if I finished at  
12 lunchtime. Can I go back to something about your  
13 basings.

14 A. Yes.

15 Q. You were based where, in 2001?

16 A. In 2001 I was based in Vancouver with what's called  
17 a preferred -- I'm sorry, I was based in Los Angeles  
18 with what's called a preferred port of Vancouver.

19 Q. But you were based in Los Angeles?

20 A. I was.

21 Q. Were you living in Calgary?

22 A. I was.

23 Q. How far away from Calgary is Los Angeles where you were  
24 based?

25 A. Air-wise, which would have been the easiest and quickest

1 way to get there, I think that was approximately a two  
2 and a half hour plane ride.

3 Q. So in order to get to LA, your base for your reserve  
4 duties, you had to go from your home to Calgary to the  
5 airport, do all the checking in, hanging around, get on  
6 the plane, two and a half hours to LA, then time to go  
7 to hotel, am I right so far?

8 A. Correct.

9 Q. Would you have paid for the air transportation?

10 A. Well, if I could just clarify one thing about reserve  
11 duty. To the best of my recollection, while I was  
12 a captain with Cathay Pacific on a base, I never ever  
13 did a reserve at an out port. So -- what I would do,  
14 though, is I would leave ahead of time to take up my  
15 regularly scheduled roster pattern.

16 Q. Are you saying you never had reserve duty --

17 A. No, sir, I'm not saying that. I'm saying to the best --

18 Q. -- while in LA?

19 A. To the best of my recollection, I don't recall being on  
20 reserve in Los Angeles.

21 Q. You do not. Do you never recall having been sick on  
22 a reserve day in Los Angeles?

23 A. Sick? To the best of my recollection, I was not sick on  
24 a reserve day in Los Angeles.

25 Q. Or sick on a reserve day at any other base, if you say

1 it wasn't Los Angeles?

2 A. I may have been sick on a reserve day, to the best of my  
3 recollection, and I'd have to go back into my records,  
4 if I could even find it, to give an affirmative to that,  
5 but I may have been.

6 MR HUGGINS: I'm not going to press you on that, Mr Young.  
7 I think we've got the drift of what you've been saying,  
8 and again, can I give you the same apology as I've given  
9 to your colleagues: if and insofar as I have taken  
10 longer than I should, I apologise and I'm thanking you  
11 for your time and patience.

12 HIS LORDSHIP: Mr Grossman.

13 Re-examination by MR GROSSMAN

14 MR GROSSMAN: Just one or two points. First of all, you  
15 said that you did get a job with Singapore Airlines.

16 A. Yes.

17 Q. What happened to that?

18 A. When I got the job at -- or when I applied for the job  
19 at Singapore Airlines, I had used a couple of gentlemen  
20 that I worked with at Wardair to see if I could use them  
21 as references, and the one gentleman had been the  
22 director of flight operations, a very high and very  
23 responsible position at Wardair. And I believe he was  
24 the director of flight operations at Singapore Airlines,  
25 so I called him and asked him if I could use them as

1 a reference and he said most certainly he would, and he  
2 actually contacted a lady by the name of Jokillah  
3 Anthony, who was fairly senior in the human resources  
4 department, so subsequently I was granted an interview  
5 by Singapore Airlines.

6 I had to pay my own airfare to get over there, which  
7 was a few thousand dollars, but I wanted to go work for  
8 Singapore Airlines. I went through the whole interview  
9 process -- which I believe and I could be corrected on  
10 this, but I believe it was two days in length, and the  
11 final thing that I had to do was a medical, and I passed  
12 the medical.

13 Q. Did you take the job?

14 A. The job was -- I was -- from their indications, I was  
15 99 per cent sure that I had the job. I interviewed with  
16 two senior pilots at Singapore Airlines, the chief pilot  
17 of the 747 and the 777, who of course asked me about the  
18 issues of being a 49er --

19 HIS LORDSHIP: It's a quite simple question, Mr Young. It  
20 was: did you take the job?

21 A. The job was never offered to me. They basically sent  
22 me -- they did send me an email, your Lordship, that  
23 said that I was no longer suitable for Singapore  
24 Airlines.

25 MR GROSSMAN: Was this after your conversation about being

1 a 49er?

2 A. With the chief pilots?

3 Q. Yes.

4 A. Well, the chief pilots recommended that I would -- to be  
5 hired. They were perfectly happy. And the lady in the  
6 HR department was perfectly happy. She said that I only  
7 had one more -- that she only had one more thing to do,  
8 and that was contact somebody in Cathay management as  
9 a reference for me.

10 Q. Thank you. The other point I wanted to ask you about  
11 was, you said in 1998 you were on the general committee.  
12 How long did you stay on the general committee?

13 A. To the best of my recollection, I believe that I left  
14 the general committee approximately mid-year, "mid-year"  
15 meaning the summer or early fall of 1998.

16 Q. Thereafter, did you have anything to do with the general  
17 committee?

18 A. I did not.

19 MR GROSSMAN: Thank you.

20 HIS LORDSHIP: Thank you very much, Mr Young, for giving  
21 evidence this morning.

22 THE WITNESS: Thank you, your Lordship.

23 HIS LORDSHIP: Mr Keene?

24 MR GROSSMAN: This afternoon.

25 HIS LORDSHIP: Then possibly Mr Rhodes, depending on when we

1 finish with Mr Keene.

2 Is that right, Mr Huggins?

3 MR HUGGINS: Yes, my Lord.

4 HIS LORDSHIP: All right. We will resume at 2.30.

5 (1.03 pm)

6 (The luncheon adjournment)

7 (2.34 pm)

8 HIS LORDSHIP: Mr Grossman.

9 MR GROSSMAN: May I just query one matter, as a result of  
10 something I have just been chatting to my learned friend  
11 about, and that is the Scott schedule, as you put it, of  
12 damages. Our understanding was slightly different.  
13 I want to make sure what your Lordship had in mind.

14 My understanding was that you wanted it together  
15 with the closing submissions next Wednesday. My learned  
16 friend feels that your indication is that you wanted it  
17 by the end of this week.

18 HIS LORDSHIP: Mr Huggins' understanding is much closer to  
19 mine.

20 MR GROSSMAN: Very well.

21 HIS LORDSHIP: Are you in a position to put it -- well,  
22 I will tell you why I wanted it at the end of this week,  
23 or I was prepared to suggest by Monday, if you are not  
24 in a position to do so, Mr Grossman. It's because  
25 during the three days or so when everyone is doing

1 written submission, I'd like to work on the case as  
2 well. I just have to have some idea of what exactly are  
3 the damages you are seeking, and Mr Huggins' case, at  
4 least in broad outline, in relation to the amounts you  
5 are seeking.

6 MR GROSSMAN: The misunderstanding was entirely mine. Could  
7 we have until Monday? We will do it as early as  
8 possible on Monday.

9 HIS LORDSHIP: What time on Monday? This is a cooperative  
10 effort between you and Mr Huggins.

11 MR GROSSMAN: I can send it to Mr Huggins, say, by  
12 mid-morning on Monday.

13 HIS LORDSHIP: That is rather short notice for Mr Huggins.  
14 More like Friday to Mr Huggins, so he has at least the  
15 weekend. Then he can get something back to you on  
16 Monday, and you get that joint document to me on Monday.

17 MR GROSSMAN: Very well. If that's the way it should be,  
18 that's the way it will be.

19 HIS LORDSHIP: I won't particularly set a deadline on  
20 Monday, but as long as I have it on Monday, then I can  
21 look at it, I can study it, I can think about it.

22 While we are talking about it, what I also thought  
23 I would do is -- the likelihood is that we will be  
24 finishing the evidence round about Thursday or Friday.  
25 Whenever we finish the evidence, I'd like to have, shall

1 we say, one case management conference with counsel, in  
2 which I propose to go through the issues with you, the  
3 issues that Mr Huggins has listed.

4 I've been studying the issues over the last few  
5 days, I've been thinking about the issues; I've been  
6 doing perhaps a little bit of research on the issues.  
7 Some of them seem to me a little pedantic. Some might  
8 not necessarily be the real issues. I want to see  
9 whether we can, during course of a case management  
10 conference, narrow down the issues to what are really  
11 the matter in dispute, so that when you write written  
12 submissions we are all guided down to focusing on  
13 exactly what the dispute is.

14 At that time, I will probably also give some  
15 preliminary views that I have on particular matters and  
16 particular questions, particular issues, so that you can  
17 then address my concerns and tell me where I have gone  
18 wrong or whatever.

19 MR GROSSMAN: That would be very helpful.

20 HIS LORDSHIP: "Whatever" is supposed to be one of the most  
21 annoying expressions in the English language, so  
22 I apologise for that. According to a recent survey,  
23 "whatever" is supposed to be very annoying. I apologise  
24 for that, Mr Grossman.

25 MR GROSSMAN: It's a judicial word, so don't worry about it.

1 My Lord, we are ready to proceed with the next  
2 witness. I call Mr Brian Keene.

3 MR BRIAN DAVID KEENE (sworn)

4 Examination-in-chief by MR GROSSMAN

5 Q. Mr Keene, I think you have made two statements. Would  
6 you look, please, in bundle IV. The first one  
7 chronologically is at page 1087. It runs to page 1101.  
8 That's your statement, is it?

9 A. To 1100, yes.

10 Q. I think you have pointed out something you wanted to  
11 expand on page 1093.

12 A. Yes, that's correct.

13 Q. In paragraph 16, the last sentence, perhaps you'd like  
14 to explain to his Lordship what you wanted to clarify  
15 there.

16 A. The sentence reads, I'm sure you can see it:

17 "I never formally discussed the issues of  
18 contractual entitlements, rostering or the AMP with the  
19 defendant myself, or with any person working for the  
20 defendant management."

21 That was an error or an oversight on my part with  
22 respect to the statement. I did have one conversation  
23 with Mr Ron Davies regarding the AMP. I specifically  
24 asked him for a hard copy of the policy and he flatly  
25 refused to give it to me.

1 Q. Very well. If you would go back --

2 HIS LORDSHIP: What was the purpose of asking him for a hard  
3 copy?

4 A. Well, it occurred to me that this might have career  
5 implications, and I thought that it would be only fair  
6 to outline the policy to the people it would affect.

7 HIS LORDSHIP: When was that, that you made the request?

8 A. I think I'd heard from colleagues that these letters had  
9 been sent out. I hadn't seen one myself. I just heard  
10 what people had been saying about them and I wanted to  
11 know exactly what they were all about.

12 HIS LORDSHIP: So about when would that be? 2001?

13 A. When it was introduced, I think 2000/2001, in that  
14 timeframe.

15 MR GROSSMAN: Thank you.

16 Would you go back to page 978. It's at the  
17 beginning of that green section.

18 A. Sure. Yes.

19 Q. I think if you look up to page 996, that's another of  
20 your statements, or your second statement.

21 A. Yes, it is.

22 Q. Do you adhere to what's in those statements?

23 A. Yes, I do.

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

25 A. Yes, I do.

1 MR GROSSMAN: Thank you.

2 HIS LORDSHIP: Thank you, Mr Grossman. Mr Huggins?

3 Cross-examination by MR HUGGINS

4 MR HUGGINS: Mr Keene, while we are on the statement which  
5 you've just corrected, at around page 1093, let's just  
6 go back a page to page 1092, where you tell us that you  
7 became a member of the union in July 1994; that's  
8 correct, is it, paragraph 14?

9 A. Yes.

10 Q. You went on, "I remained a member of the [union]  
11 throughout my career with the defendant and was a member  
12 on the date of my purported dismissal"?

13 A. That's correct.

14 Q. You went on to say that you regularly attended meetings  
15 of the union?

16 A. Yes.

17 Q. "I was not however a member of the general committee or  
18 any subcommittees."

19 So, so far --

20 A. It's all correct.

21 Q. All correct. Then you say this:

22 "I knew that for some time the [union] and the  
23 management of the defendant were having a dispute  
24 concerning contractual entitlements and rostering  
25 together with the implementation by the defendant of

1 a practice called absence management programme."

2 All right?

3 A. Yes.

4 Q. Can just tell us, in the light of what you've just been  
5 saying, whether we still take that as being correct?

6 A. That is correct.

7 Q. So what was your understanding about the nature of the  
8 dispute in relation to absence management programme?

9 A. The association didn't agree -- they didn't think it was  
10 a good policy.

11 Q. And what was the policy?

12 A. The absence management programme?

13 Q. Yes.

14 A. They didn't provide me with a copy. I didn't know what  
15 it was.

16 Q. That's why I'm slightly interested in what you say here.

17 A. You get a letter, you're invited for an interview or  
18 requested for an interview. That's all I know.

19 I wasn't provided with a copy of the policy. I asked  
20 for one and I wasn't provided, so I don't know what it  
21 was. The union leadership maybe had a better idea than  
22 I do.

23 Q. So your evidence says you knew for some time that the  
24 union and the management were having a dispute  
25 concerning contractual entitlements and rostering

1 together with the implementation of AMP, but you're  
2 saying you had no idea what that was, AMP?

3 HIS LORDSHIP: Well, he knew that it involved getting  
4 a letter, and then --

5 MR HUGGINS: And that's it? That's all you understood?

6 A. Yes.

7 Q. Well, what was your understanding about the dispute  
8 relating to contractual entitlements?

9 A. The association was endeavouring to make improvements on  
10 rostering, remuneration and benefits. Rostering was  
11 a primary objective, and we've heard this many times.

12 Q. Mr Keene, please, you're not focusing on the question.  
13 The question at the moment is relating to contractual  
14 entitlements. I'll come to rostering separately. Let's  
15 do one thing at a time.

16 Here we have your evidence that you knew for some  
17 time the union and the management were having a dispute  
18 concerning contractual entitlements. Let's just stick  
19 to that for the moment. What was the understanding  
20 about that?

21 MR GROSSMAN: Perhaps my learned friend should say what was  
22 the witness's understanding or somebody else's  
23 understanding. I'm not sure --

24 HIS LORDSHIP: He is asking the witness's understanding.

25 All right, Mr Huggins, go on with your question.

1 MR HUGGINS: Mr Keene, it's your evidence I'm trying to  
2 understand.

3 A. Yes.

4 Q. So let's just get your clear indication of what it  
5 means. What did you know about the dispute concerning  
6 contractual entitlements?

7 A. I can't bring up specific contractual entitlements at  
8 this time.

9 Q. So what was the extent of the knowledge that you're  
10 referring to here?

11 A. Between the Leaves, Flyleaf, newsletters from the union,  
12 talking to committee members.

13 Q. What is your understanding, which you choose to refer to  
14 here, about the dispute concerning rostering?

15 A. Rostering practices had been in dispute -- or perhaps  
16 not "in dispute" -- in 1999 there was an agreement on  
17 conditions of service, minus an agreement on rostering  
18 practices. The company and the HKAOA agreed to  
19 a schedule of a couple of years, I think -- I'm not sure  
20 exactly -- to come to an agreement on rostering  
21 practices.

22 Q. The words I picked up in that last answer were "perhaps  
23 not a dispute". I am focusing on your word here.

24 A. Okay. Well, I call it a dispute then. They were in  
25 dispute over rostering practices.

1 Q. Well, it's your word, Mr Keene.

2 A. Yes, that's correct.

3 Q. What did you understand to be the nature of the dispute?

4 A. Rostering practices?

5 Q. Yes. What was between them? Are you saying you've no  
6 idea?

7 A. There was no dispute governing rostering practices.

8 Q. Was that the nature of the dispute, as you understood  
9 it?

10 A. As I understood it, at the time.

11 Q. That's all?

12 A. Well, I wrote "contractual entitlements, rostering and  
13 the absence management programme", the three items that  
14 I wrote there.

15 Q. Yes, and I'm trying to understand what you meant by it.

16 A. I think I just told you.

17 Q. Very well.

18 "Although I was not on any of the negotiating teams  
19 of the [union], I supported the [union] in its dispute  
20 with the defendant management with regard to rostering  
21 and to the plaintiffs' contractual entitlements,  
22 and I supported the stance taken by the HKAOA against  
23 the AMP."

24 Let's break that down into the three separate  
25 components.

1 First of all, tell us about what you supported in  
2 relation to the union's dispute regarding rostering.

3 What were you supporting there?

4 A. I was supporting the desire for the AOA and its  
5 membership to come to an agreement over rostering  
6 practices with the management.

7 Q. What particular aspects of the rostering programme were  
8 you unhappy about?

9 A. They were trying to get rid of some safeguards, and they  
10 are written in other documents I've seen today: for  
11 example, 5-4-3 protection; various industrial agreements  
12 that had been historically part of the rostering  
13 practices which were no longer agreed upon, I think. So  
14 they were trying to come to agreement over rostering  
15 practices that were in dispute.

16 Q. There were aspects of the rostering practices that you  
17 yourself were interested in because presumably it was  
18 having an impact on you, as a pilot. Will you tell us  
19 about those, please.

20 A. There were aspects, but at the time I was based in  
21 New York, and my schedules were actually pretty good.  
22 I didn't want for too much, other than maybe a little  
23 more time off. But my colleagues, of course, were eager  
24 to see an agreement with the company on rostering  
25 practices that govern pilots elsewhere in the company,

1 and so as a union member I was in support of that.

2 There were certain things that could be done on the  
3 roster that I disagreed with and I was hoping to see  
4 those go away, but in the main I was reasonably happy  
5 with my own situation.

6 Q. You see, I'm just interested in why you chose to say in  
7 your evidence that you support the union in its dispute  
8 with the management with regard to rostering. I'm  
9 trying to understand what aspects of the rostering you  
10 were wanting to see changed.

11 A. Well, not having flown a Hong Kong roster for I think  
12 about four years at that time, I wasn't getting the  
13 disruptions and the 0 days and the EXBs, and the  
14 reserves, the defensive reserves, where there were  
15 numerous people on reserve for the same aircraft type  
16 and at the same time period. I wasn't getting most of  
17 that, but my colleagues were, and so in support of them  
18 and the general committee, who I supported, then I am in  
19 agreement with their goals, at that time.

20 Q. So you're saying that as far as you're concerned, the  
21 rostering arrangements didn't really affect you?

22 A. Not to the extent they affected colleagues on other  
23 bases.

24 Q. "Not to the extent"? That means it was affecting you  
25 but not as badly as --

1 A. From time to time I would maybe get a reserve that was  
2 unnecessary or not a guaranteed day off where there  
3 could be one, that sort of thing. But on the whole, no.  
4 My schedules were pretty good.

5 Q. And the contractual entitlements, what were you  
6 supporting the union in relation to --

7 A. I think I just answered that.

8 Q. Forgive me, I don't think you have given us any more  
9 than the vaguest of notions. I'd just like a little  
10 more help on the specifics.

11 It's your evidence, you see, that you supported the  
12 union in its dispute with the management regarding  
13 contractual entitlements. So what were you supporting,  
14 as far as the union's position is concerned?

15 A. When we spoke about this a few minutes ago, I said that  
16 I could not think of specific contractual entitlements  
17 that were in dispute.

18 Q. If that's so, this statement looks rather empty, doesn't  
19 it? What does it mean?

20 A. I don't know. Take it at face value.

21 HIS LORDSHIP: I think all Mr Huggins is saying is that now  
22 is your opportunity -- you have made a statement which  
23 on the face of it looks critical of the airline  
24 management. He's giving you an opportunity to say  
25 whatever it is that you want to say about the problems

1           you perceived at the time, whether contractual  
2           entitlement or rostering practice. You've given your  
3           evidence on that, but he's saying, if that's really all  
4           you were complaining about, it doesn't seem to be a very  
5           strong statement at the end of the day. Would you  
6           accept that or not?

7    A. I see what you're saying.

8    HIS LORDSHIP: I must confess, what I've been hearing  
9           a moment ago, I would have to agree with Mr Huggins if  
10          he submits that this is rather vague and unclear.

11   A. Okay. Things that had clearly been in the contract, as  
12          far back as, say, 1994/1993, were now part of benefits,  
13          which could be changed by the company, as they saw fit,  
14          from time to time. So that would happen by way of just  
15          a notice to crew or a letter to crew. So contractual  
16          entitlements, like I think retirement schemes, medical  
17          benefits, housing allowance, those are the kinds of  
18          things that were being modified, from time to time,  
19          because they were no longer contractual; they were now  
20          part of the benefits.

21                So, I'm sorry, it took me this long to bring that to  
22          mind, but I'm quite sure those are the contractual  
23          entitlements that were in dispute; things that had  
24          previously been in the contract but were now a part of  
25          benefits and subject to modification, from time to time.

1 MR HUGGINS: You then deal with the third aspect, AMP, and  
2 you say:

3 "... I supported the stance taken by the [union]  
4 against the AMP."

5 What stance were you referring to there?

6 A. They didn't think it was a good idea.

7 Q. Any more specifics?

8 HIS LORDSHIP: And you supported that because ...?

9 A. Well, it seemed to me that on the face of it, from what  
10 I'd heard from people -- because, like I said, a policy  
11 wasn't provided to me -- that being off sick for too  
12 many times in a period was now going to be subject to  
13 scrutiny or even disciplinary -- it appeared that it  
14 could become disciplinary, based on what I'd heard about  
15 the policy.

16 HIS LORDSHIP: You thought that was a bad thing?

17 A. Yes, because -- sorry.

18 HIS LORDSHIP: Go ahead. Because ...?

19 A. I thought that what you were going to end up with was  
20 having guys in the airplane that weren't fit to fly,  
21 because they were worried about the number of times they  
22 had already been sick in the previous year or whatever.  
23 You know, that didn't seem like an idea good to me  
24 either. The general committee didn't support it  
25 and I didn't think it was a good idea either.

1 HIS LORDSHIP: Mr Huggins.

2 MR HUGGINS: You then go on:

3 "In this context, I agree with the contents of the  
4 statement of John Simpson Warham dated 25th June 2004  
5 where he has explained these issues."

6 Do you see that?

7 A. Yes.

8 Q. So I take it that at the time you made this statement,  
9 you must have looked carefully at the statement of John  
10 Simpson Warham dated 25 June, and satisfied yourself  
11 that those specifics, which we can read for ourselves,  
12 were also in accord with what you agreed with? You  
13 agreed with what he was saying?

14 A. Yes.

15 Q. It would follow that in order for you to agree with  
16 that, you would have had to have the same degree of  
17 specific understanding as set out in that statement,  
18 would you not?

19 A. Yes.

20 HIS LORDSHIP: There may be a problem in that I think I may  
21 have struck out a whole lot of those paragraphs.

22 MR HUGGINS: That may be in terms of the relevance as  
23 your Lordship perceived them, but in terms of his  
24 evidence as to what he was agreeing with, I think  
25 perhaps your Lordship will be able to see what's said

1           there.

2           May I come back to that, take on board what  
3           your Lordship says and see whether I need to come back?

4   HIS LORDSHIP: All I am saying is, Mr Huggins, you having  
5           taken the care to have it all struck out, you may find  
6           that as a result of your questions it all comes back,  
7           notwithstanding it having been struck out.

8   MR HUGGINS: As I've said to your Lordship, I have taken on  
9           board what you've said, and I obviously don't want to go  
10          down an area which your Lordship doesn't think is going  
11          to be helpful, so let me move on, and come back if  
12          I have to.

13          Can I go on to paragraph 17, Mr Keene?

14   A. By all means.

15   Q. "I was aware of the maximum safety strategy ('MSS')  
16          being adopted on 3rd July. A copy of the document was  
17          sent to my home while I was on days off."

18          So do we understand from that that you would have  
19          seen that -- when?

20   A. I think it was released on the 29th, or between the 29th  
21          and the 1st, and it would have either -- I seem to  
22          recall that a hard copy was actually sent to my home,  
23          but I can't be sure, although if I had an email copy  
24          then I printed it off, because I remember seeing  
25          a printed page of MSS on my desk.

1 Q. In the normal course of things, you would have been  
2 sent, would you not, emails like the one I will take you  
3 to -- on the 29th, as you rightly say, something came  
4 out about MSS, in fact it was stage 1 -- that would have  
5 been sent to you by email on that date, would it not?

6 A. Yes.

7 Q. You would have seen it at that date?

8 A. I read virtually all the emails I got from the AOA.

9 Q. Can I ask you this: did you intend, in any of your  
10 witness statements, to give the impression that you  
11 attributed fatigue which you personally were suffering  
12 to a combination of Cathay's unacceptable rostering  
13 arrangements and, as you put it, perhaps a stress caused  
14 by the ongoing deteriorating relationship between  
15 Cathay/Veta/USAB management and their employees? Does  
16 that accord with what you understand you've said in your  
17 statement?

18 A. That's what I said.

19 Q. Let's just analyse that for a moment, because as  
20 I understand it -- and you can correct me if I've got it  
21 wrong -- you were saying that the unacceptable rostering  
22 arrangements of Cathay were causing you personally  
23 fatigue?

24 A. Yes.

25 Q. So it wasn't just a question of your colleagues; you too

1 were feeling the effects of those arrangements?

2 A. From time to time.

3 Q. And something which you felt sufficiently important or  
4 material, in the context of this case, to refer to in  
5 the statement?

6 A. There were certain roster disruptions that would cause  
7 me to suffer from fatigue that exceeded what would  
8 normally be jetlag.

9 Q. Insofar as your statement, and you've agreed, also  
10 talked about a combination of those unsatisfactory  
11 rostering arrangements and what you said was perhaps  
12 stress caused by the ongoing deteriorating relationship  
13 between the management of the defendants and their  
14 employees, could you perhaps expand on that for us?  
15 What did you perceive to be the ongoing deteriorating  
16 relationship between the employees, including yourself,  
17 and the management?

18 A. The fact that we were having trouble getting the company  
19 to come back to the table and negotiate on the issues  
20 that we wanted them to -- that we would like to have  
21 them negotiate on, and it led to, you know, the contract  
22 compliance situation. It just wasn't fun. Sorry,  
23 that's not an appropriate term.

24 Q. Of course it is.

25 A. It wasn't really a happy place to work, most of the

1 time, you know, so -- I wasn't happy with, you know,  
2 being in this level of dispute with management all the  
3 time, you know, with my representatives and the  
4 membership being in dispute with management all the  
5 time. It just made it stressful, and at times it made  
6 one unhappy.

7 Q. Mr Keene, please don't feel reticent in any way.

8 I don't think it's inappropriate at all for you to  
9 express in however strong language you like, obviously  
10 within reasonable parameters, about how strongly you  
11 felt about this. I mean, you did feel strongly, didn't  
12 you?

13 A. I felt strongly that things could be better.

14 Q. You felt strongly that the management could do a lot  
15 better to appreciate the difficulties that you felt?  
16 Don't be coy about it.

17 A. Yes, I did.

18 Q. Can I ask you about another specific thing you've told  
19 us in your statement. For his Lordship's note, I think  
20 it's paragraph 24 at page 1097-1.

21 I can take you to it but I think you will probably  
22 remember. You say that at the time of your dismissal,  
23 you had not informed the airline about your health  
24 problems which had been causing your more recent  
25 non-attendance at work. Do you remember saying words to

1           that effect?

2    A.   Yes.  I don't have that page in front of me.

3    Q.   No, but you recall --

4    HIS LORDSHIP:  I think the problem is that 1097-1 is  
5           actually missing from the bundle.

6    A.   Yes, it is.

7    MR HUGGINS:  But you recall that being the position and you  
8           saying words to that effect?

9    A.   Yes.

10   MR HUGGINS:  Did your Lordship say it is missing from your  
11           bundle?

12   HIS LORDSHIP:  It is missing from my bundle as well, but we  
13           will have one with the witness.  I hadn't noticed that  
14           it had been missing.

15   MR HUGGINS:  Can you just look at paragraph 24 and  
16           confirm -- I think you already have, very fairly, but  
17           I want to make sure that I haven't got any mistake about  
18           this -- that you were conveying there that at the time  
19           of your dismissal you had not informed the airline about  
20           your health problems which had been causing your more  
21           recent non-attendance at work.  Is that the effect of  
22           what you are saying there?

23   A.   That's correct.

24   Q.   Just out of interest, why did you not tell the airline  
25           about that?

1 A. I thought I stated that as well.

2 HIS LORDSHIP: You just might want to answer the question.

3 A. Yes. I was hoping, because I was consulting my  
4 physician at home for the problem, and I was hoping that  
5 it would fix itself before I had to discuss it with the  
6 company or the company doctor.

7 MR HUGGINS: I think you go on in paragraph 25 to say that  
8 you did not pick up your post when it arrived and so you  
9 did not get the letter dated 5 June 2001 from the  
10 company regarding your absences from 1 June 2000 to  
11 31 May 2001; you didn't get that until after your  
12 dismissal?

13 A. Yeah, but it wasn't because I didn't pick up my post.

14 Q. Is that not what you're saying there?

15 A. Well, that's implying that I'd left it there or -- I'm  
16 not sure what you mean.

17 Q. Just read paragraph 25 to us. I haven't even got it  
18 open; it's just my note. You tell us what you said in  
19 paragraph 25.

20 A. It says:

21 "... I did not receive this letter until after my  
22 purported dismissal by the defendant. I received the  
23 letter after asking a colleague to retrieve my mail from  
24 my company mailbox."

25 Q. Did you not say that you didn't pick up your post

1           yourself?

2    A.   I had to have someone else do it because I hadn't been  
3       on the property when the letter was in my mailbox.

4    Q.   When you say you weren't on the property, at that stage,  
5       of course, being 25 June 2001, you hadn't yet gone on  
6       your annual leave, which I don't think you went on until  
7       18 June; is that not right?

8    A.   I seem to recall the 23rd, but ...

9    Q.   Have you checked that recently?

10   A.   I looked in my logbook when I wrote this statement, and  
11       I was sure it was the 23rd, but I don't have the book  
12       here with me.

13   Q.   I'm going to suggest to you that your annual leave in  
14       that year was 18 June to 1 July, and that you then took  
15       sick leave from 2 July to 9 July, which was the date  
16       when you were dismissed.

17   A.   I was dismissed on the 11th.

18   Q.   I beg your pardon?

19   A.   I was dismissed on 11 July.

20   Q.   Let's focus on the sick leave.  When do you say that you  
21       took sick leave in July?

22   A.   That week.

23   Q.   The 2nd to the --

24   A.   To the 9th.

25   Q.   You think it was the 9th?

1 A. I think so.

2 Q. So the annual leave that I'm putting to you, 18 June to  
3 1 July, you really can't remember that?

4 A. I recall it as being the 23rd, but if your records show  
5 the 18th --

6 Q. You recall putting it in the statement, perhaps, is that  
7 what you're saying, or when did you last check that?

8 A. When I wrote this.

9 Q. In any event, you would have been, would you not, in  
10 Hong Kong before you went on annual leave?

11 A. Yes.

12 HIS LORDSHIP: I think you can insert that page into the  
13 bundle.

14 A. Ah. I didn't know how simple it was. Thank you,  
15 your Lordship.

16 MR HUGGINS: Let me just ask you a few more questions about  
17 what happened after you were dismissed before I go back  
18 to the situation before.

19 You were offered jobs by, amongst others,  
20 China Airlines, were you not?

21 A. Yes.

22 Q. You joined them in November 2002?

23 A. Yes.

24 Q. Did you stay with them for 18 months?

25 A. Yes.

1 Q. Were you employed by Airborne Personnel Limited in May  
2 2004?

3 A. Yes.

4 Q. Was it a choice by you to leave China Airlines and go to  
5 Airborne Personnel?

6 A. Yes.

7 Q. Having joined Airborne Personnel, how long did you stay  
8 with them?

9 A. I was there -- I flew with them for a year. However,  
10 I started another job while I was still flying with  
11 them, so it might show that in March of 2005, when  
12 I started my job working for Parc Aviation and Nippon  
13 Cargo Airlines.

14 Q. So what caused you to leave Airborne to go to Nippon?

15 A. More, shall we say -- the future looked brighter at  
16 Nippon Cargo than it did at Airborne Personnel,  
17 Air Atlanta.

18 Q. Having joined Nippon in 2005, how long did you stay with  
19 them?

20 A. I'm still with them.

21 Q. So from 2005, right to the present, you've stayed with  
22 Nippon?

23 A. Yes.

24 Q. During that time, have you been content to stay with  
25 them or have you thought you wanted to move elsewhere?

1 A. It has occurred to me to go elsewhere, and I've had  
2 a look around but nothing has caught my eye, as it were.

3 Q. With Nippon, where are you based?

4 A. I'm based in North America, and most of my trips start  
5 either in New York or Chicago.

6 Q. That suits you, doesn't it?

7 A. It does, yes.

8 Q. Is that part of the reason, perhaps, why you haven't  
9 pushed, pressed any applications to some of the other  
10 airlines who I suggest you would have known your fellow  
11 plaintiffs have been offered jobs by?

12 A. That is a part of the reason, yes, to be with my family  
13 in Canada, which is where they prefer to stay.

14 Q. Out of interest, have you in fact, while you've been  
15 with Nippon, applied to the likes of SIA Cargo?

16 A. I have applied for no other jobs since I started with  
17 Nippon.

18 Q. That shortens that. Thank you, Mr Keene. That is very  
19 helpful.

20 Can we now go back to another matter. Having been  
21 based, in terms of family, in the United States, or  
22 North America, was it the position that you, together  
23 with Messrs Neich-Buckley, Morissette, Young and  
24 van Keulen, the five of you, began proceedings in  
25 California?

1 A. That's correct.

2 Q. As part of those proceedings in California, was there  
3 a jurisdictional issue being raised in that court?

4 A. Yes.

5 Q. Was it the position that one of the claims to  
6 jurisdiction by you and your fellow plaintiffs was that  
7 Cathay was flying into California and therefore that  
8 state had an interest in the safety of aircraft flying  
9 into that jurisdiction, and that you and your colleagues  
10 were, as it were, whistleblowing about safety issues in  
11 relation to Cathay, and that is one of the principal  
12 foundations for your claim to jurisdiction in that  
13 territory? That was your understanding, wasn't it, in  
14 broad terms?

15 A. No.

16 Q. Do you really say that?

17 A. Whistleblowing --

18 Q. What did you understand to be the jurisdictional problem  
19 that you had in California?

20 A. I actually wasn't on that action for very long, because  
21 of where I lived.

22 Q. You mean it was struck out?

23 A. My part of it was, yes.

24 Q. It was struck out because your claim to foundation and  
25 jurisdiction didn't work in America, did it?

1 A. I thought, and it's been a while, but I thought it was  
2 struck out because I lived in Canada.

3 Q. Are you saying you did not appreciate that part of your  
4 claim in those proceedings to jurisdiction in California  
5 was based on the fact that you and your colleagues were  
6 raising safety issues in relation to Cathay's operation?

7 A. If I remember correctly, the complaint was wrongful  
8 termination and defamation.

9 Q. Forgive me: I think you're perhaps not addressing the  
10 question. I'm not asking you what your claim for money  
11 was based on. I'm asking what was the claim to found  
12 jurisdiction in California, when of course the issues  
13 raised were essentially Hong Kong issues. You must have  
14 been aware of all that argy-bargy, were you not?

15 A. True enough, but you know, you hear in the industry of  
16 various employees that aren't necessarily employed in  
17 the US but operate airplanes into the US, and they've  
18 had situations where they have been successful in  
19 surviving a jurisdictional issue and carry on. So, you  
20 know, we thought it appropriate that since we were --  
21 our normal place of work was in the United States, that  
22 we could try and address our complaints in the US.

23 Q. Are you saying that you were not raising any safety  
24 issues in those proceedings? You can't say that, can  
25 you, really, hand on heart, Mr Keene?

1 A. I didn't submit a statement to those proceedings. I met  
2 with the counsel once. Then I didn't survive  
3 a jurisdictional issue on that.

4 Q. Were you or were you not raising issues of safety in  
5 those proceedings?

6 A. I was not.

7 Q. All right. Let me ask you something about your basing.  
8 You were living in Canada in a place I think called --  
9 forgive me if I get the pronunciation wrong --  
10 Tantallon, Tantallon?

11 A. Tantallon, yes.

12 Q. I got it right the second time.

13 Your children were going to school where, Halifax?

14 A. Halifax.

15 Q. Where were you actually based?

16 A. New York.

17 Q. Some distance away?

18 A. A couple of hours by plane.

19 Q. But you chose to live that distance away from the base?

20 A. I did.

21 Q. Which of course you're entitled to do. But one of the  
22 consequences of doing that was that you would have to  
23 fly, or take another form of transportation, in relation  
24 to any reserve days, to New York?

25 A. That's correct.

1 Q. Which you'd have to pay for?

2 A. Yes.

3 Q. Hotels would have to be paid for by you, not by your  
4 company?

5 A. I didn't use a hotel. I had a permanent place to stay  
6 there, that I paid for on a monthly basis. But yes, it  
7 was my account.

8 Q. Would you not accept that you regarded it as somewhat  
9 inconvenient, having to go to New York for reserve days  
10 and then sometimes hang around and not actually be  
11 called?

12 A. Well, to be honest, the only reserve day I can remember  
13 doing in New York was the day I was purportedly  
14 dismissed by the defendants. I didn't do a lot of  
15 reserve in New York. And when I --

16 Q. Did you take any sick -- I'm sorry, Mr Keene. Did you  
17 take any sick days on your reserve days?

18 A. I didn't do any.

19 Q. You didn't have any sick days?

20 A. I didn't do any reserve.

21 Q. But that may be because you were sick, you called in  
22 sick?

23 A. No, I wasn't -- I'm sorry. I wasn't scheduled for  
24 reserve.

25 Q. Very well. Let's go back, if I may, to help which

1 I would like from you by reference to bundle X.

2 Perhaps you might just turn to page 359 in bundle X.

3 Do you see there, under "Brian Keene", some records in  
4 relation to sick periods of yours, and under the  
5 details, where there's an R, reserve, "RNY", reserve  
6 New York -- do you see those references to reserve in  
7 New York?

8 A. I do, yes.

9 Q. Does that not help you to recall that there were  
10 occasions when you called in sick on your reserve days?

11 A. Then I was mistaken.

12 Q. Can we go back to rostering, contractual entitlements,  
13 contract compliance, which you mentioned a little while  
14 ago. Can you just tell us, please, by going to  
15 pages 101 and 102 in bundle X -- this document, dated  
16 25 September, as we see in the bottom right-hand corner,  
17 involved a reminder to members about a resolution on  
18 contract compliance, bringing back contract compliance  
19 on 11 July 2000; we see that in the third paragraph. Do  
20 you see that?

21 A. Yes.

22 Q. It reminds members about the original motion and the  
23 fact that everyone is expected to comply with it.

24 It then refers to a number of other aspects, under  
25 the heading "Beyond the Motion", identifying various

1 things which members are being encouraged to comply  
2 with.

3 I think you said earlier you would have seen all  
4 these newsletters?

5 A. Yes.

6 Q. Now, would you just help us all by giving, in your own  
7 words, your understanding as to the purpose of this  
8 contract compliance campaign, in particular in relation  
9 to what you wanted management to do or not do.

10 A. The objective by the AOA was to try and put pressure on  
11 management to return to the negotiating table.

12 Q. Was it your understanding, as described, I think  
13 probably quite well this morning, by one of your  
14 colleagues, that it was perceived that the management  
15 were stonewalling?

16 A. Stonewalling? They were not eager to return to the  
17 table, I don't think.

18 Q. Well, let's put it another way: you were meeting a bit  
19 of a brick wall?

20 A. It seemed that way sometimes, yes.

21 Q. And that was the need to do something about it?

22 A. Yes. Yes.

23 Q. Here there's reference to contactability being the key.  
24 Was it, in effect, being said by the union -- supported,  
25 I suggest, by you and all loyal members -- that one of

1 the ways of guaranteeing you the kind of rest you felt  
2 you needed, on, for example, GDOs, guaranteed days off,  
3 is to render yourself uncontactable by the management,  
4 so they can't ask you, "Oh, come on, please, Mr Keene,  
5 please, Brian, will you do this flight or that flight"?  
6 That's the effect of it, isn't it?

7 A. Yes, it is, but prior to a lot of this occurring, my  
8 view on working GDOs was -- I was against it anyway. So  
9 I didn't need contract compliance to instruct me or tell  
10 me that I shouldn't be working on GDOs.

11 Q. Was that because your attitude -- and I'm not saying  
12 whether you are right or wrong, it doesn't matter --  
13 was, "Look, I'm entitled to work when I'm on duty, and  
14 if I'm on reserve duty I've got to be on reserve, but  
15 otherwise, why should they have anything over the top of  
16 that when I need my rest"? In a nutshell, is that where  
17 you were coming from?

18 A. That's not why I disagreed with working on GDOs.

19 Q. Tell us why you disagree.

20 A. Because it became apparent to me, in the years after  
21 I joined Cathay Pacific, that the company relied  
22 routinely on pilots working on their days off to carry  
23 out the task, and I saw this as being a hindrance to  
24 career progression, because if you have so many,  
25 X number of days off per year that are worked by

1           captains, if that wasn't happening then they would need  
2           more captains, and that would free up the promotion.

3           That's the way I looked at it, and I'm sure that the  
4           second officers that were below me felt the same way.

5   HIS LORDSHIP: Just explain that again. If a lot of people  
6           were prepared to work during their guaranteed days off,  
7           there would not be a need for as many captains,  
8           therefore you would be less likely to be promoted?

9   A. Not less likely. Just that the spots wouldn't come as  
10          quickly.

11   HIS LORDSHIP: Because everyone was prepared to do a little  
12          bit more work?

13   A. Yes.

14   HIS LORDSHIP: On the other hand, if fewer people were  
15          prepared to work during their GDOs, then Cathay would  
16          need to hire more captains?

17   A. No, they would need to promote more first officers to  
18          captains, your Lordship.

19   HIS LORDSHIP: And Cathay would need to have more captains?

20   A. Yes.

21   HIS LORDSHIP: And they would do that by promoting more  
22          first officers to captains, and getting more first  
23          officers, and so on?

24   A. Yes, my Lord.

25   HIS LORDSHIP: Right. I understand. Mr Huggins?

1 MR HUGGINS: So in a sense it was, "Look, why should the  
2 management get something more out of us than we're  
3 obliged to give, when it may assist them but it's not  
4 going to assist me in my search for promotion"? Is that  
5 it in a nutshell?

6 A. Well, it's not just that. There's also the disruption  
7 and the instability and infringement on rest that goes  
8 with working on days off.

9 Q. So it's a combination? It's more complicated; it's  
10 a combination of those reasons?

11 A. Yes.

12 Q. Any other reasons?

13 A. Just run the question by me one more time.

14 Q. You have identified two reasons, I think.

15 A. For not working on GDOs?

16 Q. Yes, not being in favour of them.

17 A. Yes.

18 Q. I am just asking whether we have covered it all or  
19 whether there is anything else you would like to --

20 A. That's all.

21 Q. In any event, it was your understanding that in order to  
22 put the kind of pressure that was necessary upon the  
23 management, one would need to support the union in its  
24 campaign? It's a collective arrangement. It's not  
25 something that one person could achieve on his own.

1 That's obvious.

2 A. Yes.

3 Q. You would agree?

4 A. I agree.

5 Q. From these documents, it would appear that the union was  
6 quite keen to at least say to its members -- how serious  
7 they were I haven't the slightest idea, but at least say  
8 to its members -- "Look, boys, we regard it as  
9 misconduct if you don't join in the collective  
10 pressure". You were aware of that, were you not?

11 A. Yes.

12 Q. They were putting that in the newsletters from time to  
13 time, as we can see in this bundle?

14 A. Yes.

15 Q. Can you help me with page 120, which was on 30 October.  
16 At the bottom of the right-hand column there's reference  
17 to "further steps", and it's saying:

18 "Most are probably wondering what 'further' actually  
19 means. We've traditionally shied away from industrial  
20 action because it's not the intelligent solution."

21 Just pausing there, did you think that maybe  
22 industrial action was not an intelligent solution?

23 A. I disagree with that, I think.

24 Q. You think it is an intelligent solution?

25 A. I'd be open to it, yes.

1 Q. The way they put it, rather graphically, is beating  
2 a donkey?

3 A. Yes, they do.

4 Q. It says, "Why beat a donkey when a few carrots should do  
5 the trick?" So, on balance, you're quite in favour of  
6 beating the old donkey? That's the logic of what you're  
7 saying, is it not, Mr Keene?

8 A. I mean, later on these documents they talk about  
9 incremental pressure and that sort of thing. So I don't  
10 know if you're getting the donkey stick out just yet,  
11 but maybe the few carrots aren't working so we've got to  
12 be open to other things.

13 Q. To be fair to you, that seems to be what they go on to  
14 say later down here:

15 "In the meantime we can divulge that we are going to  
16 keep chopping away for however long it takes to break  
17 through. One month? That would be good. One year?  
18 Another five years? However long it takes. We  
19 introduced contract compliance in 1996 but management  
20 ignored the problems and now suffers with the  
21 inefficiencies. Therefore, without progress in the near  
22 future, we may have no choice but to take the next  
23 logical step. Time is running out for management."

24 Did that, in effect, meet with what you're saying  
25 now?

1 HIS LORDSHIP: Sorry, "Did that, in effect, meet with what  
2 you're saying now?"

3 MR HUGGINS: Yes, what you were saying a moment ago, that  
4 one may have to use a bit of the old beating the donkey,  
5 limited industrial action.

6 HIS LORDSHIP: I still don't understand the question.

7 A. It doesn't say that there, and I'm not sure --

8 MR HUGGINS: In that case --

9 HIS LORDSHIP: Did that meet with beating the donkey?

10 I'm not sure it's going to help one way or the  
11 other, Mr Huggins.

12 MR HUGGINS: My Lord, I am very grateful for that  
13 indication. I was becoming far too loose and I need to  
14 tighten it up.

15 I apologise, Mr Keene. All right?

16 A. No problem.

17 Q. Let's move on, because I think other documents may be  
18 more precise.

19 In any event, at page 122 -- and this will be one of  
20 many examples I can show you -- the newsletters were  
21 saying, "Look, boys, the contract compliance is still in  
22 effect and is impacting operations daily". We can see  
23 that at the bottom of page 122, "Contract Compliance",  
24 the first sentence.

25 A. Yes.

1 Q. That was the sort of announcement that was being put  
2 out, to encourage you all to keep up the pressure. Was  
3 that your understanding or would you put it differently?

4 A. Is what my understanding? I'm sorry.

5 Q. Them saying "Contract compliance is still in effect";  
6 that's number one.

7 A. Yes.

8 Q. So that was your understanding, it was still in effect?

9 A. Yes.

10 Q. Secondly, it's impacting operations daily; it's having  
11 an effect?

12 A. Yes.

13 Q. They say the same thing again, more graphically, at  
14 page 136:

15 "Contract compliance continues to increase in its  
16 effectiveness as reserves are exhausted and the  
17 management's options wither. Multiple cancellations and  
18 extensive delays continue to increase on a weekly  
19 basis."

20 Do you see that?

21 A. Yes.

22 Q. I'm not for one moment suggesting that you would have  
23 been personally in a position to measure yourself --

24 A. Of course.

25 Q. -- the extent of the effect, but in broad terms it was

1 your understanding, was it not, that the union were  
2 saying, "Come on, boys, it's having an effect, the  
3 pressure is there, keep it up"?

4 A. That's what the union were saying, yes.

5 Q. That was the only way you were going to have any chance  
6 of getting these people back to the table?

7 A. It was the way we were trying at the time, yes.

8 Q. If you look at page 149, you will see, in large bold  
9 type, "CONTRACT COMPLIANCE":

10 "For avoidance of doubt, management has not made  
11 significant progress towards our remuneration and  
12 rostering concerns and therefore contract compliance  
13 campaign remains in full effect."

14 Now, was it your understanding, because progress was  
15 not being made, that's why contract compliance had to  
16 remain in full effect until such time as progress was  
17 made?

18 A. That is my understanding.

19 Q. Can I just ask you to look at page 157, please. Were  
20 you in court in morning when I put this to the other  
21 witnesses, the email from John Findlay to John Warham  
22 and others, to Nigel Demery, the one about the  
23 conversation he had had with Nick Rhodes?

24 A. Yes.

25 Q. You were in court then?

1 A. Yes.

2 Q. I won't read it all out. I'll try and leave out the  
3 less polite bits. But the bit I'm interested in is the  
4 fact that "87 officers, including 3 [general committee]  
5 members and [John Simpson Warham] were off sick last  
6 Sunday. He [Rhodes] half hinted that the AOA had  
7 arranged it. This is twice the average and I am told  
8 today by a good source that IOC nearly imploded in  
9 trying to keep the operation going. So we now know the  
10 target to aim for."

11 First of all, let me break that down. Were you  
12 aware that there were days when twice the average number  
13 of people, pilots, were calling in sick?

14 A. I had heard of a situation like this once. I don't know  
15 if it was this one, because I can't remember exactly  
16 when I heard, but I remember hearing something about --

17 Q. Who did you hear that from?

18 A. Just colleagues that I was chatting with at the time.  
19 You know, the rumours float around, you know, and so  
20 I think I'd heard that there was a day or two, I don't  
21 know if it was this one or another one, where crew  
22 control had trouble meeting their task.

23 Q. Was it part of the tittle-tattle you are talking about,  
24 people saying, "Have you any idea what that caused to  
25 IOC? They nearly imploded" or "They nearly fell apart",

1 or words to that effect?

2 A. Words to that effect, but, you know, not jumping for  
3 joy. This isn't fun stuff to hear, really, you know.

4 Q. But was it said as a source of amusement, perhaps; is  
5 that what you are saying?

6 A. Well, no, and when I spoke of these kinds of situations,  
7 I wasn't happy about it myself, you know, because, like  
8 I said, it's not fun to be in this kind of a situation.

9 Q. Can you help me with another matter, at page 160. There  
10 is a reference to, in the right-hand column, the second  
11 paragraph, focus discussions which gave the union a  
12 "clear indication that the membership want to apply  
13 further pressure in the near future to encourage  
14 management to meet our financial needs."

15 Did you go to any of these focus discussions?

16 A. I did.

17 Q. Did you get the feeling from those around you that that  
18 was the part of the sense of the meetings, that people  
19 wanted to do something?

20 A. Yes.

21 Q. It says:

22 "In other words, we may have to cross the boundary  
23 between simple contract compliance and limited  
24 industrial action."

25 Can you perhaps throw some light on this? How did

1           you perceive that?

2    A.   That they may have to cross the boundary between simple  
3       contract compliance and limited industrial action.

4    HIS LORDSHIP:   But the limited industrial action?

5    A.   Cross the boundary between the two.

6    HIS LORDSHIP:   But what was the limited industrial action?

7    A.   At that time, I don't know.  I can't say.

8    MR HUGGINS:   But what did you perceive to be the line that  
9       might have to be crossed?

10   HIS LORDSHIP:   The question is unclear.

11   MR HUGGINS:   My Lord, I am grateful to your Lordship  
12       and I must try and clarify it.

13                Did you have any kind of understanding as to whether  
14       there was a line between contract compliance and  
15       industrial action?

16   A.   Yes, I think there was a line between the two.  I'd  
17       heard terms like "withdrawal of enthusiasm", a WOE; I'd  
18       heard that --

19   Q.   I'm sorry, I misheard the second part: withdrawal of  
20       enthusiasm, woe, and --

21   A.   Yes, W-O-E, WOE.  It's a play on words, acronym type  
22       thing.  I thought that that's what would be the next  
23       step, you know, because -- yes.

24   Q.   I see.  I know this is laborious so I'll try and keep it  
25       as short as I can.  Can we just go to page 196.  This is

1 headed "20th JUNE EGM".

2 A. Yes.

3 Q. That's the subject of the letter, but I just want to  
4 show you that actually the letter comes out a few days  
5 before that meeting, on 16 May, from the president,  
6 Nigel Demery. We will see that from the bottom of  
7 page 198. You will see from the bottom there, it's got  
8 attachments: agenda, proxy and video.

9 I can show you the agenda. That appears at  
10 page 194, which came with the letter. I can show you  
11 the proxy, that's at page 195. I can't show you the  
12 video but I don't suppose it much matters.

13 Do you actually remember getting a video? I've been  
14 fascinated --

15 A. I have a stack of CDs like this at home, yes.

16 Q. Do you happen to remember what the video was about on  
17 this occasion?

18 A. Not specifically, no.

19 Q. Anyway, they send you an agenda, so you can see what the  
20 resolution was:

21 "... [we] will undertake limited industrial action  
22 with effect from 1 July 2001, until further notice."

23 We can see that in the agenda at page 194.

24 A. Yes.

25 Q. Over the page, "APPOINTMENT OF PROXY".

1           Before I come to ask you your recollection about  
2           that, I just want to help remind you about the letter.  
3           Page 196 explains to everybody what's driven the  
4           committee to propose this resolution. It says in the  
5           middle of the page:

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.

10          2. Management must address our rostering,  
11          remuneration and benefits needs.

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

16          I'm going to pause there. There were other  
17          objectives as well, which Mr Grossman can ask you about  
18          if he likes, but just those ones alone, you would have  
19          seen that, would you not?

20        A. Yes.

21        Q. To be fair to the union, they were making it clear at  
22          page 197 at the bottom, and page 198 at the top, that  
23          the committee had "evaluated all options between the  
24          boundaries of doing nothing, to embarking on an all-out,  
25          indefinite strike", and they have concluded that "at

1           this stage, the sensible solution lies somewhere in  
2           between. We favour the use of incrementally increasing  
3           pressure, thereby minimising disruption to our  
4           travelling public, until we achieve our goals."

5           Would that fairly encapsulate the way you felt about  
6           it as well?

7    A.    The way I felt about it?

8    Q.    Or did you favour "the use of incrementally increasing  
9           pressure, thereby minimising disruption to our  
10          travelling public, until we achieve our goals"? Break  
11          it down however you like.

12   A.    I'm in agreement with this statement, yes. I was at the  
13          time.

14   Q.    Can you help us: did you actually turn up at the meeting  
15          and vote yourself, with a show of hands, or did you send  
16          a proxy along?

17   A.    I did turn up at the meeting.

18   Q.    Did you vote?

19   A.    I did.

20   Q.    Did you vote in favour of it?

21   A.    I did.

22   Q.    And I may have forgotten to ask you earlier: did you  
23          vote in favour of the contract compliance thing in July  
24          that I showed you?

25   A.    Yes.

1 Q. In that case, if you were at the meeting, you would be  
2 able to help us, I think, possibly, about the minutes  
3 which you will find in bundle IX at pages 2896 to 2901.  
4 The bit that might prompt a recollection is at  
5 page 2898, where there's a record of the discussions  
6 that took place at the meeting and before the vote.

7 Here, does this help remind you that the president  
8 was asking for support from everybody? Do you remember  
9 that anyway, even without this document?

10 A. Yes.

11 Q. He was saying what the resolution was going to be; you  
12 knew that already?

13 A. Yes.

14 Q. Then did somebody from the floor say, "There have been  
15 lots of rumours about what limited action is -- I would  
16 like to know what it entails"? Do you remember other  
17 people being interested in --

18 A. I remember a couple of people having a word from the  
19 floor.

20 Q. I mean, were you not interested yourself in what form  
21 the limited industrial action was going to take?

22 A. I was, but I'd known Nigel for quite a while, I had two  
23 close personal friends on the GC at the time, and I had  
24 quite a bit of faith in the leadership, that it was not  
25 going to be something that would jeopardise our

1 contracts; you know, we were going to be within our  
2 contracts.

3 Q. It was your understanding that you'd be working within  
4 the terms of your contract, but at the same time  
5 increasing the pressure on the management?

6 A. Yes.

7 Q. Okay. There's a reference to, "We will publish plans on  
8 29th June" -- this is in the bottom right-hand corner of  
9 page 2898 -- "We will publish plans on 29th June". Do  
10 you remember them saying that they were going to tell  
11 everyone what the industrial action was going to be on  
12 29 June?

13 A. Do I ...

14 Q. I'm sorry, I may have mumbled that.

15 A. No, you didn't. You referred to that but you're asking  
16 about something else.

17 Q. I'm trying to prompt a recollection on your part: at  
18 that stage, they were not identifying precisely what  
19 form it was going to take?

20 A. That's correct.

21 Q. In fact, I think on another document they were saying to  
22 people, "Look, we are not going to give our tactics  
23 away, we are going to keep that up our sleeves for a wee  
24 bit"; do you remember words to that effect?

25 A. Only that I've read them recently, and I would have read

1           them then, but --

2    Q.   Yes.

3    A.   I'm sorry.

4    Q.   That's okay.  What I'm getting at is that it hadn't come  
5           out yet, what form it was going to take?

6    A.   No.

7    Q.   I think that was the point your colleagues were making,  
8           but they were indicating when it would come out?

9    A.   Yes.

10   Q.   So were you interested in when it would come out?

11   A.   Yes.

12   Q.   In fact, as it happens, it came out on 29 June, when at  
13           that point you were already on leave; is that the  
14           position?

15   A.   Yes.

16   Q.   Where were you on leave?  In Hong Kong or back home?

17   A.   I was home in Canada.

18   Q.   So, when it came out, you were away?

19   A.   Yes.

20   Q.   Did you get a notification through the email, as usual,  
21           as to what it was?

22   A.   Yes, I did.

23   Q.   Was that the document which was headed "MSS -- Stage 1"?

24   A.   Yes.  I think I mentioned that earlier, that I had  
25           received one at home, either electronically or a hard

1 copy, yes.

2 Q. But your point is that you yourself were not able to  
3 implement it yourself because by the time you came back  
4 you'd been dismissed?

5 A. Yes.

6 MR HUGGINS: If you just bear with me, I'm trying to keep it  
7 short.

8 Mr Keene, I hope I've kept it as short as I can.  
9 Thank you for your time and your assistance and your  
10 patience.

11 THE WITNESS: You're welcome.

12 HIS LORDSHIP: Mr Grossman?

13 MR GROSSMAN: No re-examination. Thank you.

14 HIS LORDSHIP: Very well. Mr Keene, thank you very much for  
15 coming to give evidence this afternoon.

16 THE WITNESS: Thank you, my Lord.

17 HIS LORDSHIP: Mr Grossman, is that all for you today?

18 MR GROSSMAN: I have no more witnesses today. There is just  
19 one left, Mr van Keulen.

20 HIS LORDSHIP: Mr van Keulen, and that's still on Thursday?

21 MR GROSSMAN: On Thursday, yes.

22 HIS LORDSHIP: All right.

23 MR HUGGINS: I am going to call Mr Rhodes. I don't know  
24 whether the shorthand writer or anyone else needs  
25 a break for a couple of minutes. I wonder whether we

1           might just have two minutes.

2   HIS LORDSHIP:   That's fine.   I can give five minutes.   We  
3           will resume at 3.50.

4   MR GROSSMAN:   If it's of any help, I definitely won't finish  
5           Mr Rhodes this afternoon, but I am pretty sure I will  
6           finish with the defence witnesses tomorrow afternoon,  
7           without giving any guarantee.

8   HIS LORDSHIP:   Right.   The plan is, Mr Huggins, that  
9           Mr Rhodes will continue tomorrow afternoon; is that the  
10          idea?

11   MR HUGGINS:   My Lord, will you forgive us if we have to  
12          interpose tomorrow morning Mr Anthony Tyler and  
13          Mr Philip Chen, simply because they both need to go to  
14          Beijing in the afternoon?

15   HIS LORDSHIP:   That's no problem.   I am just clarifying that  
16          I've you understood you correctly.

17   MR HUGGINS:   Your Lordship is correct, and indeed, with  
18          a bit of luck, we may even be able to continue with  
19          Mr Rhodes during the morning tomorrow.   But it's  
20          Mr Rhodes this afternoon, Tony Tyler at 10 o'clock  
21          tomorrow, followed by Philip Chen, then back to  
22          Mr Rhodes until he has finished.

23   HIS LORDSHIP:   That's fine.

24   MR HUGGINS:   Then Sten Kroutil, and then that's it.

25   HIS LORDSHIP:   That's fine.   Thank you.   We will resume at

1 3.50.

2 (3.46 pm)

3 (A short adjournment)

4 (3.52 pm)

5 MR HUGGINS: My Lord, I call Nicholas Peter Rhodes.

6 MR NICHOLAS PETER RHODES (sworn)

7 Examination-in-chief by MR HUGGINS

8 Q. Mr Rhodes, you are quite softly spoken and you've seen  
9 the difficulty I have from time to time, but more  
10 important perhaps is that a lot of people at the back  
11 are entitled to hear what you're saying, so could you  
12 keep your voice up, please.

13 A. (Witness nodded).

14 Q. Would you please take bundle X, and go to page 4. Keep  
15 your finger in that and go through to page 34, and  
16 confirm that that is a witness statement dated  
17 7 September 2009, signed by you as being true and  
18 honestly made?

19 A. Yes.

20 MR GROSSMAN: That is the only witness statement that I'm  
21 asking this witness to produce, my Lord.

22 HIS LORDSHIP: It is a composite statement --

23 MR HUGGINS: It is a composite of things that had come  
24 before. If my learned friend wants to cross-examine him  
25 about anything earlier, he can do that.

1           Mr Rhodes, there's a thing called "top-up" which  
2           I have been asked to keep brief, and I will try and do  
3           that, but there are a few things which have arisen that  
4           I would like you to deal with.

5           The first one is this. Mr Shaw, Mr Heron and  
6           Mr Blakeney-Williams have all said something in their  
7           evidence about rostering instability as being due to  
8           under-crewing by Cathay Pacific. Would you like to say  
9           something about that?

10        A. Yes. I'm happy to. It has come up a lot.

11           The company position is that we were not  
12           under-crewed. The reason I know that is that the  
13           planning department of the company, before they ever had  
14           a flight or choose to mount extra capacity, will always  
15           ask the flight operations department if we have  
16           sufficient crew. So we are the department which decides  
17           whether the airline can expand, whether we are able to  
18           add extra services. So we wouldn't put on a flight  
19           unless we had sufficient crew.

20           But the number of crew that are required to operate  
21           a service does have an assumption about how many crew  
22           may be off-duty, sick at any one time. You have to have  
23           an assumption as to how many crew are either on  
24           long-term sick with disabilities, or short-term sick  
25           with some ailment. That assumption is based on

1 a particular percentage or a particular number.

2 So obviously, if the number of crew sick at any one  
3 time is more than double the estimates we would have  
4 when we were calculating our crewing levels, then  
5 clearly we are going to have a problem where we are  
6 short of crew. But the basic numbers are correct for  
7 the task that we had at hand. We can always balance the  
8 crew a little bit during the year by allocating annual  
9 leave. You may have too few crew in one month and will  
10 have less leave allocated. We may have too many crew in  
11 another month and we will allocate more leave.

12 So the leave is our ability to balance the number of  
13 crew with the task. So at any one time we should have  
14 the right number of crew for the task.

15 Q. After that evidence was given by the other witness,  
16 I think you have given to your solicitors, who have  
17 caused to be sent to the court and to the other side,  
18 something which may or may not assist. It is now  
19 appearing as the last document in the bundle --

20 HIS LORDSHIP: 379.

21 MR HUGGINS: -- at page 379. His Lordship is ahead of all  
22 of us, as usual. Page 379 at the end of this bundle.

23 HIS LORDSHIP: Just to clarify, Mr Huggins, I used to have  
24 another page 379, but that was another letter you said  
25 was useless.

1 MR HUGGINS: I'm told that has been taken out.

2 So the page 379 that appears now, there are two  
3 graphs. There's a graph 5 and there's a graph 6. Would  
4 you explain to the court what, if any, assistance this  
5 gives in relation to what you have just been telling the  
6 court?

7 A. Yes. Perhaps if I can begin with graph 6, because this  
8 shows from October/November 2001 -- a little bit  
9 blurred, but -- the percentage of crew who should be on  
10 duty that day who have called in sick, and it sits  
11 around 6 or 7 per cent. That's a relatively normal  
12 level. It's normal across the industry and it's normal  
13 for Cathay Pacific.

14 If we look for the period from January to September  
15 2001, it's very hard to pick an average there but  
16 I think it's quite clear that the mean is perhaps double  
17 the number of crew who should be on duty who were  
18 calling in sick. There are some spikes where it's up  
19 over 13 or 14 per cent, I think, on about five  
20 occasions.

21 What we do in crew control or crew management is we  
22 do keep a track of how many rostered duties have  
23 changed. So the upper chart, graph 5, shows the  
24 percentage of duties on the roster that are unchanged.

25 So in a stable period here, in end of 2001 through 2002,

1 85 per cent of the duties on the roster are unchanged.  
2 In 2001, there was more disruption on the roster,  
3 clearly, from this graph, and somewhere between 70 and  
4 75 per cent of duties were unchanged, meaning 25 to  
5 30 per cent of duties were changing on the roster.

6 So we believe that that just supports my point that  
7 the roster disruption is in direct proportion to the  
8 amount of sickness absence at any one time.

9 Q. Can I now move, please, to another topic. In relation  
10 to the contract compliance campaign which we have heard  
11 about, and evidence has been given about announcements  
12 from the union to the effect that contactability was the  
13 key, would you please summarise to his Lordship, in  
14 a nutshell, what, if any, consequences flowed from  
15 non-contactability of pilots on their non-duty and  
16 non-reserve days, as far as the airline operator's  
17 perception goes?

18 MR GROSSMAN: It might help save time if my learned friend  
19 could ask that just in relation to the 18 plaintiffs.

20 HIS LORDSHIP: I'm going to let him ask it the way he wants  
21 to ask it, because I'm not entirely sure how you want to  
22 ask it, Mr Grossman, then you just ask it the way you  
23 think it should be asked.

24 MR GROSSMAN: Very well.

25 A. The general answer is obviously with that high level of

1 sickness, much higher than budgeted, you would be short  
2 of crew for the task on a particular day and you would  
3 have to call out crew from reserve. So if you call out  
4 crew from reserve, that's fine, but if the crew on  
5 reserve have also gone sick or are being used up, there  
6 will be occasions where you haven't got a pilot for  
7 a flight. Now, it's not so simple as just having enough  
8 captains and first officers and second officers, you  
9 have to have them on each aircraft type, 747s, 777,  
10 Airbus, whatever the different types were at the time.  
11 So there may be a category of crew which is short, we  
12 may not have a captain on a 747 on that particular  
13 afternoon because we have too many crew sick and not  
14 enough left on reserve.

15 So what we will then do is call a guy who is on  
16 a day off, and it may be that he is due to fly the next  
17 day. So we'll ring him up and say, "Instead of flying  
18 tomorrow, will you fly to Malaysia today and we'll give  
19 you a day off tomorrow?" So you do rely on calling crew  
20 to make sure all of the flights will depart. So of  
21 course, if you cannot contact crew on a day off, it does  
22 mean that the flight is going to be cancelled or delayed  
23 significantly. So the contactability is important to  
24 keep the schedule in place.

25 MR HUGGINS: We have seen, on a number of occasions --

1 and I have laboriously put to all the plaintiffs, or  
2 nearly all -- the contract compliance resolution which  
3 came in in July 2000. During the course of the hearing  
4 it was appreciated that one of the documents already in  
5 the bundle had referred to contract compliance earlier  
6 than that, and contract compliance coming in in 1996.

7 What is your recollection as to the way in which the  
8 first campaign ceased and the second one started?

9 A. It's hard for me to go back beyond or before 1998.

10 I came to Flight Ops in about February 1998, but  
11 I recall in 1998 the contract compliance was in place  
12 and we were in negotiations late 1998/early 1999, to try  
13 to get an agreement.

14 My understanding is once we reached an agreement in  
15 the summer of 1999, contract compliance was lifted  
16 shortly thereafter -- I can't remember the exact date,  
17 but it was lifted shortly after we reached an agreement  
18 in July. It may even be as part of the agreement.

19 Then we had a period with no contract compliance,  
20 and things returned to normal. Then we began talking  
21 about rosters in 2000, and most of the year in 2000 we  
22 were talking about rosters. Talks were obviously not  
23 going as the union had hoped, and contract compliance  
24 came back in in the middle of 2000 and remained in place  
25 up until 2001.

1 Q. Can you, in general terms, indicate to his Lordship what  
2 sort of response the airline took to the contract  
3 compliance campaign? What in material terms did it lead  
4 to?

5 A. There were times when the flights were cancelled or  
6 flights were combined, and we had to give passengers  
7 away to other airlines or we just lost flights  
8 completely. So when we were concerned about contract  
9 compliance being stepped up, and towards the end of the  
10 year 2000 things were coming to a little bit of a head,  
11 we were trying to reach an interim agreement on roster  
12 practices with the help of the Labour Department.  
13 Things were coming to a head up to Christmas, and there  
14 was a threat that contract compliance would lead to  
15 cancellations over Christmas and the New Year period.

16 So we chartered a fleet of aircraft at that time,  
17 I think 14 wet leased aircraft, at a cost of  
18 US\$14 million, but fortunately we reached the deal at  
19 the eleventh hour in the Labour Department and we didn't  
20 need those aircraft.

21 Then of course in 2001, with the threat of  
22 industrial action, we chartered in a fleet of 22 wet  
23 leased aircraft at a cost of US\$22 million. So if we  
24 thought we were going to suffer multiple cancellations  
25 with the threat of contract compliance or industrial

1 action, we would bring in aircraft to make sure the  
2 travelling public would be protected as best we could.

3 Q. We have seen, and I've taken the plaintiffs to a number  
4 of announcements in the newsletters about what the union  
5 was saying was the effectiveness of the contract  
6 compliance campaign. It was suggested that the  
7 management would have seen those newsletters. Can you  
8 confirm that?

9 A. We saw a lot of the newsletters. I can't honestly say  
10 whether we saw them all. I used to get sent them at  
11 times, and then we re-hired Mr Kroutil as the industrial  
12 relations manager, and from the time we hired him  
13 I think he started receiving the newsletters.

14 Q. Perhaps I will take it up with him as to what records  
15 you have and what records you don't.

16 Can I just ask you this: in the bundle X which you  
17 are in, can you just look very briefly, please, at  
18 page 217, which is the letter we have been describing as  
19 the open letter from the union to the travelling public.  
20 Would you have been aware of that letter at the time?

21 A. Yes, I saw it in draft and I think I saw it in the  
22 newspaper.

23 Q. What was your response to that letter?

24 A. I think that was the catalyst or the trigger to start  
25 bringing in the wet leased aircraft. As soon as this

1 letter hit the press, we started to lose a significant  
2 number of bookings. This is when we started to lose  
3 literally hundreds of millions of dollars in bookings,  
4 not just passenger bookings but airfreight, as people  
5 quite naturally were nervous about what was going to  
6 happen in the summer, and beyond. So that was the start  
7 of the real loss of income for the company and when we  
8 started to charter the fleet of 22 aircraft.

9 Q. The point has been made by the various plaintiffs that  
10 the words "limited industrial action" there, they didn't  
11 know at the time what form it was going to take. What's  
12 the position as far as you were concerned? Did you know  
13 what form it was going to take?

14 A. No. We didn't know at this stage.

15 Q. Did that have any consequences as to how you were going  
16 to deal with it?

17 A. It made it impossible to know what to do. We didn't  
18 know whether it was going to be wildcat strikes, strikes  
19 or stoppages in particular bases, in certain ports  
20 overseas, or whether it was just going to be  
21 an escalation of the sickness campaign. We had no idea  
22 at all what that was going to do.

23 Q. Could you go, please, to page 226, an announcement on  
24 29 June about the "Maximum Safety Strategy -- Stage 1",  
25 and I have reminded various plaintiffs of the last two

1 paragraphs, about:

2 "Regrettably, 'Maximum Safety' will incur  
3 significant delays. WE ANTICIPATE THAT FLIGHTS WILL  
4 COMMONLY INCUR DELAYS OF 15-60 MINUTES OR MORE."

5 Would this be something that would have been seen by  
6 the management of Cathay?

7 A. Yes. We would have seen this.

8 Q. What concerns, if any, would there have been as to that?

9 A. I think this is obviously when we knew what the tactic  
10 was going to be, and I think it was a tactic that was  
11 used in the US by some pilot unions there, because a lot  
12 of the carriers in the States rely on the hub-and-spoke  
13 operation where they connect through one central  
14 airport, and Cathay Pacific does very much the same. We  
15 rely on quick connections through Hong Kong.

16 60 per cent of our customers make connections. So if  
17 all the flights in Hong Kong were being delayed 15 to 60  
18 minutes, some of the flights from the out ports, then it  
19 would cause chaos to what we call a 6th freedom carrier  
20 like Cathay with connections. This would be very, very  
21 damaging. So we were extremely concerned, if this was  
22 to happen, that the whole schedule would fall apart.

23 Q. Those are the main things. There are just one or two  
24 loose ends which I'd like to tie up, disconnected  
25 miscellaneous points which have been raised. If you go,

1 please, to page 375 in the same bundle, the joint  
2 statement made by Mr Warham and Mr Heron to the Labour  
3 Tribunal. If you go, please, for a moment to  
4 paragraph 19.9, I don't know whether this is going to be  
5 relied on by my learned friend at some point, so in case  
6 it is I just want you to help his Lordship as to what  
7 you say about it.

8 In this document it is recorded, although Mr Warham  
9 didn't speak to it in his evidence:

10 "Some time prior to this date [in June 2001],  
11 Mr Nicholas Rhodes, the deputy director flight  
12 operations had stated that, if the union and/or its  
13 members did not comply with their demands then  
14 management would simply, '... fire 20 to 30 pilots and  
15 the rest would fall into line'."

16 Did you or did you not say that?

17 A. I did not say that.

18 Q. Thank you. Another loose end -- Mr Crofts, in  
19 his witness statement -- which at the moment I don't  
20 know whether his Lordship is going to find it helpful or  
21 not, he may not, and if I'm wasting his time he will  
22 know that I will apologise appropriately -- made a  
23 reference to the fact that Cathay must have appreciated  
24 the psychological impact the statements Messrs Tyler and  
25 Chen were having on them, because he says that when

1 a number of them applied at a lower level to be  
2 reinstated by Cathay, Cathay asked for psychological  
3 assessments or counselling, or some such to be engaged.

4 Do you remember that, and can you help us as to what  
5 the purpose of that was?

6 A. Yeah, I remember the statement. We had the --  
7 an agreement in 2005 where 49ers were allowed to reapply  
8 for their positions at Cathay, and I think about 19 --

9 Q. Sorry, can you speak up, please?

10 A. About 19 -- I think about 19 applied for a position,  
11 so -- as a result of an agreement with the AOA at the  
12 time. So we were going through a process of  
13 interviewing these individuals for reemployment, and  
14 we were a little concerned about what may happen when  
15 these individuals were reintegrated into Cathay, because  
16 of course there's a lot of emotion associated at  
17 the time. In 2001, there were some pilots who would  
18 answer the phone, others who wouldn't, some who would  
19 report sick more often, others who wouldn't.

20 Some AOA members left the union at that time, in  
21 2001, because they didn't support the actions that were  
22 being taken, and there was a quite a lot of emotion  
23 associated with that period, understandably. The union  
24 was supporting the 49ers financially after  
25 the termination, so if crew had left the union at that

1 time then they had withdrawn their financial support as  
2 well.

3 So we were quite concerned when the 49ers came back  
4 on the flight deck, there wasn't going to be any  
5 antagonism or any problems. You want a harmonious  
6 flight deck to operate an aeroplane, of course. So part  
7 of the interview process was just to make sure that that  
8 emotional baggage had been offloaded, if you like; that  
9 they had moved on and there wasn't going to be an issue  
10 when they came back with Cathay.

11 And I'm not qualified to assess that in  
12 an interview, but as the director of flight operations,  
13 I have to make sure the flight decks would be safe, so  
14 we employed some -- one was the company doctor and one  
15 was a psychologist we use in the UK, just to be part of  
16 the interview. There was a separate interview, just to  
17 advise me that these crew were absolutely fine and would  
18 be no problem back in the airline. So that was the only  
19 purpose of that interview.

20 Q. Two more loose ends and then I will sit down.

21 Mr Neich-Buckley yesterday gave evidence to the effect  
22 that you told him that he should not be in the union and  
23 suggested that he get out of it -- words to that effect.

24 Did you ever say anything like that to him?

25 A. I didn't say that and I wouldn't say that. I would

1 never give advice to a crew member, whether they join  
2 the union or not. That's an individual matter.

3 Q. Finally, subject to any reminder that Mr McLeish may  
4 give to me about anything I have left out,  
5 tape-recordings on the flight deck: was there a routine  
6 whereby flight decks were recorded? Crew control --  
7 there were tape-recordings, were there not, of exchanges  
8 between crew control and individual pilots?

9 A. Yeah, I was going to say there are tape-recordings on  
10 the flight deck, but the tape-recordings in crew  
11 control, we tape every conversation between the pilots  
12 and the crew controllers, and those tapes are discarded  
13 after nine months to a year, I believe. We don't detain  
14 those tapes, but we do use them if there was a specific  
15 complaint by a crew controller at the time, but we don't  
16 keep them permanently.

17 MR HUGGINS: Mr Rhodes, please stay there because  
18 Mr Grossman will have questions for you, but can you  
19 please -- again, I'll have to ask you, you're  
20 my witness -- I'm having difficulty hearing, and I know  
21 that everyone sitting there will want to hear what  
22 you are saying. Please do keep your voice up.

23 HIS LORDSHIP: Mr Grossman.

24 Cross-examination by MR GROSSMAN

25 MR GROSSMAN: Mr Rhodes, I have read your statements

1 and I have listened to the case that has been put by  
2 Mr Huggins to the witnesses. You have been in court all  
3 the way through, I think. Tell me, why were these 49  
4 dismissed?

5 A. Because, after very careful review, we felt that  
6 they weren't working in the best interests of  
7 the company.

8 Q. What did that have to do with the contract compliance  
9 scheme?

10 A. It was a combination -- the assessment was a combination  
11 of attitude during the contract compliance period,  
12 helpfulness and level of co-operation with the company,  
13 and attendance. It was a combination of attendance and  
14 attitude was really how we assessed the plaintiffs.

15 Q. What about the maximum safety scheme? Was that  
16 a contributing factor?

17 A. No. The introduction of the MSS was really the trigger  
18 for us to conduct the review, but it wasn't a factor in  
19 itself.

20 Q. Is it the position that any of these 49 were dismissed  
21 because of their union activities concerning  
22 the contract compliance scheme or not?

23 A. That was purely their individual attitude and  
24 attendance. That's all we could assess.

25 Q. It had nothing to do with the contract compliance

1 scheme?

2 A. Well, their behaviour during the contract compliance  
3 scheme was reflected in their level of co-operation with  
4 the company and their level of helpfulness.

5 Q. Yes.

6 A. But we couldn't have any way of knowing whether they  
7 voted for contract compliance. We just could see their  
8 actions, and all we were assessing was the actions in  
9 their day-to-day duties, and whether they were  
10 helpful/unhelpful, cooperative/uncooperative,  
11 pro-company/anti-company. All we could do was assess  
12 the actions. We don't know where they lie in any other  
13 union matters.

14 Q. Would it be right to say, then, that your evidence is  
15 that union matters had nothing to do with the decision  
16 to dismiss any of these individuals?

17 A. Well, the decision to dismiss the individuals was based  
18 purely on the actions we were witnessing. Now, I mean,  
19 I was aware that the union was promoting contract  
20 compliance, was promoting crew to be uncontactable.  
21 We believe the union was involved in the sick-out  
22 campaign, based on that email I had received. I know  
23 the union was involved in that, but all we could judge  
24 was which crew members were acting in an unhelpful  
25 fashion that we felt was against the company's interest.

1 That was all we could assess.

2 Q. So, as far as the individuals are concerned -- I want to  
3 make sure that I do understand it -- these 49 are  
4 concerned, none of them was dismissed because of  
5 specifically taking part in union activities?

6 A. No, I think I'm quite clear they were specifically  
7 dismissed because of their actions and their attitude  
8 and their attendance issues.

9 Q. I see. You've heard the case that was put by your  
10 counsel, and I think it's true to say to every single  
11 one of them, the suggestion was they were participating  
12 in union activities. Didn't you hear that?

13 A. I --

14 Q. That was the case that was put.

15 A. I've been in court, yes.

16 Q. First of all, would you look at bundle IX, page 2907.  
17 This is a letter dated 27 June 2001. We haven't looked  
18 at it yet. It's from Captain Barley. It's written on  
19 Cathay Pacific letterhead, and can I take it that  
20 it would have been written with some kind of official  
21 sanction?

22 A. If it was written by Captain Barley, yes.

23 Q. All right. Let's see what it says. 27 June 2001,  
24 we understand the chronological context:

25 "Dear Crew Member,

1 I thought it was important to update you personally  
2 on current negotiations and to clearly state the  
3 company's intentions in the event of disruption."

4 Do you see that?

5 A. Yes.

6 Q. "Let me begin by strongly stating the company's hope  
7 that an agreement can still be achieved and that we are  
8 prepared to continue non-stop talks toward that end."

9 Would it be fair to say that that was the company's  
10 attitude at that stage?

11 A. Yes, we were still in talks.

12 Q. "As you may be aware, I delivered a letter to the HKAOA  
13 on Monday setting a firm deadline to conclude  
14 negotiations by midnight Thursday 28 June unless the  
15 HKAOA withdrew their intention to distribute their  
16 disruption plan to members the following day."

17 Do you see that?

18 A. I see that.

19 Q. It goes on to say, "... we are committed to reaching  
20 a negotiated settlement ...", et cetera.

21 If you turn to page 2, it says:

22 "I realise that the month ahead may be a difficult  
23 one. Sadly there are some militant members of the HKAOA  
24 who will put pressure on the rest of our pilots to  
25 disrupt our operations. Some of this pressure may also

1 be directed against families and loved ones and so  
2 I would like to offer our unconditional support to help  
3 all pilots and their families who feel they are  
4 subjected to this sort of pressure."

5 I want to pause there. Is any of the 49 included in  
6 these militants that are referred to?

7 A. I haven't referred to any of the 49 as militant, no.

8 Q. Captain Barley does. I just want to know if he is  
9 representing individual people, you understand.

10 A. I don't think he was referring to anyone specifically,  
11 no.

12 HIS LORDSHIP: Did you help in the drafting of this letter?

13 A. I can't recall.

14 HIS LORDSHIP: You can't recall whether you helped in  
15 the drafting of this letter?

16 A. I can't recall specifically, my Lord.

17 HIS LORDSHIP: Did you discuss the letter with him?

18 A. Most likely.

19 MR GROSSMAN: Very well. The last paragraph says:

20 "Let me stress once again that we will do all we can  
21 to help reach a comprehensive settlement with the HKAOA  
22 and put this current dispute behind us. Then we can  
23 work together once more to concentrate on making Cathay  
24 Pacific the world's most admired airline."

25 If you had reached a settlement, which everybody was

1           striving for, it says, would these 49 have been  
2           dismissed?

3   HIS LORDSHIP: I think that's speculative, Mr Grossman.

4   MR GROSSMAN: No, I want to know what his intention was.

5           Was it still the intention, on the 29th -- when this  
6           document was signed, 27 June, was it the intention at  
7           that stage to sack people, to dismiss people?

8   A. No.

9   Q. It wasn't?

10   A. We had no intention at this stage to sack people.

11   Q. All right. So, can we assume --

12   HIS LORDSHIP: That wasn't quite the question. The question  
13           was if negotiations had succeeded, would anyone be  
14           sacked?

15   A. Again a hypothetical. I'm not certain what would have  
16           happened.

17   HIS LORDSHIP: I think the way Mr Grossman wishes it to be  
18           put: if the negotiations had succeeded, was  
19           the intention on 27 June 2001 that anyone would be  
20           sacked?

21   A. My wish, my desire, was to reach a negotiated settlement  
22           round the table, in which case the threat of industrial  
23           action would be lifted, contract compliance would be  
24           lifted, and we'd return to normal. That was our hope.

25   MR GROSSMAN: That was your hope?

1 A. That was my hope.

2 Q. So it was your hope, was it, that everybody could get  
3 round the table, everything would be sorted out, nobody  
4 would need to be dismissed?

5 A. Absolutely. That was my wish.

6 Q. These 49 people, then, were dismissed because you didn't  
7 get around the table and come to an agreement?

8 A. Well, I think once we failed to reach an agreement and  
9 the limited industrial action was launched, and  
10 we started to lose those hundreds of millions of  
11 dollars, that's when the patience of my seniors ended.  
12 I'd been under a lot of pressure for the past 18 months  
13 from some of my seniors, who couldn't believe how  
14 patient we were being in trying to reach a deal, while  
15 all of the increased sickness was going on, and I said,  
16 "Look, give me time, give me time. When we reach  
17 a deal, the sickness levels will come down. If we reach  
18 a deal, the crew will start co-operating", and I pushed  
19 and pushed for time to reach an agreement. I think once  
20 the limited industrial action started and we failed to  
21 reach an agreement, that was the catalyst for the senior  
22 management to say, "No more time. We don't wish to  
23 employ crew working against our interests".  
24 Q. 49 people were dismissed because you didn't reach  
25 an agreement?

1 A. No, 49 people were dismissed because of their actions  
2 over the previous 30 months.

3 Q. What did that have to do with whether you reached  
4 an agreement or not?

5 A. Well, if we'd reached an agreement, the hope was  
6 they would stop the sickness and stop the contract  
7 compliance and everything would return to normal and  
8 we'd be able to crew our flights and passengers would  
9 stop cancelling bookings.

10 Q. Those 49 people, those 49 would stop their misbehaviour,  
11 as it were?

12 A. Well, all -- yeah, all crew members who were  
13 participating in contract compliance or the sick-out  
14 campaign would stop and come back to normal behaviour.  
15 That would be the hope.

16 Q. I'm talking about the 49 people.

17 A. Well, the 49 people are the ones during the review on  
18 5/6/7 July who we thought were the most active  
19 participants in the contract compliance and the --

20 Q. They were the most active participants in the contract  
21 compliance scheme?

22 A. In being uncooperative and unhelpful and poor  
23 attendance, those were the ones who we assessed as being  
24 the most unhelpful to the company during that period.

25 Q. But they would not have been dismissed had you reached

1 an agreement with the union?

2 A. If we'd reached an agreement that day and limited  
3 industrial action was called off, and contract  
4 compliance was lifted, of course there would have been  
5 no further action.

6 Q. I see. Thank you.

7 You can put that away for a moment.

8 HIS LORDSHIP: Mr Grossman, looking at the time, it's 4.27.  
9 I think you were about to say you were moving to  
10 a different topic.

11 MR GROSSMAN: It's a very short point.

12 HIS LORDSHIP: Why don't we finish that topic.

13 MR GROSSMAN: I will finish it by 4.30.

14 His Lordship is not going to make a ruling one way  
15 or another whether you were under-crewed or over-crewed  
16 one way or whatever, but would you accept that there was  
17 a real concern, justified or not, amongst the pilots,  
18 that Cathay Pacific was under-crewed?

19 A. I can't comment whether it was a real concern. That was  
20 the line the union was using, and I believe that was  
21 the line that many of the AOA members believed, but  
22 it wasn't the situation. I think that was part of  
23 the communication campaign or propaganda campaign or  
24 rallying the troops. That was why the roster was so  
25 unstable, because we were short of crew, whereas

1 the truth is the roster was unstable because of  
2 that heightened level of sickness.

3 Q. Would you accept that the pilots themselves were in  
4 a better position than the management to know if  
5 they were flying too much, if they were stressed from  
6 overflying?

7 A. No -- well, two questions there, but we had the data as  
8 to how many hours the pilots were flying, how many days  
9 the pilots have off, and we don't believe that that was  
10 beyond the norm in terms of hours flown and days off.

11 MR GROSSMAN: We will continue this tomorrow, with  
12 his Lordship's permission.

13 HIS LORDSHIP: Unfortunately, Mr Rhodes, apparently we will  
14 be interposing a few witnesses before you resume.  
15 During the time that you are giving evidence, during  
16 the adjournment, you may not discuss the case with  
17 anyone. So until you resume, which may be sometime  
18 tomorrow morning, or perhaps tomorrow afternoon, you may  
19 not be able to discuss the case with anyone. That may  
20 make you very happy. You have been living with the case  
21 for a little while.

22 Mr Grossman, is there anything else for this  
23 evening?

24 MR GROSSMAN: No, thank you.

25 HIS LORDSHIP: Mr Huggins?

1 MR HUGGINS: No, my Lord. Thank you.

2 HIS LORDSHIP: So we will start with Mr Tyler.

3 MR HUGGINS: Mr Anthony Tyler tomorrow morning, then

4 Mr Philip Chen and then return to Mr Rhodes.

5 HIS LORDSHIP: Thank you very much.

6 (4.28 pm)

7 (The hearing adjourned until 10.00 am

8 the following day)

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