

Wednesday, 14 October 2009

(10.02 am)

HIS LORDSHIP: Mr Grossman? Mr Huggins?

MR HUGGINS: May it please you, my Lord, I call Anthony  
Nigel Tyler.

MR ANTHONY NIGEL TYLER (sworn)

Examination-in-chief by MR HUGGINS

Q. Mr Tyler, to your right, there are a number of bundles.  
Would you take two of them out. One is numbered VI.  
The other one is numbered X. In No. X we will find your  
witness statement, which if you confirm the truth of its  
contents, will become your evidence-in-chief.

If you will go in that bundle, please, to page 80,  
and when you come to page 80 you should then find 80-1,  
where your recent statement has been inserted.

A. Yes.

Q. Can you find that?

A. Yes.

Q. If you go to 80-4, you will see it is dated 6 October  
and bears your signature; is that right?

A. That's right.

Q. Is that statement true and honest, and is it your  
statement, and are you content for it to become your  
evidence in this trial?

A. Yes.

1 Q. Mr Tyler, before I hand you over to my learned friend  
2 Mr Grossman to cross-examine, would you just have the  
3 statements which he will probably want to ask you  
4 questions about, which are in that other bundle, bundle  
5 VI.

6 If you would go first, please, to page 1476 in the  
7 top right-hand corner.

8 A. I've found it, yes.

9 Q. Can I just marry up the statements in here to what is in  
10 your statement and now part of your evidence. If you  
11 look at paragraph 5 of your witness statement, you say:

12 "I refer to the statements made by me on or about  
13 9th July 2001 ..."

14 First of all, can I take you to this document,  
15 pages 1476 to 1477, where you will see it is headed:

16 "Press Room, 9 July.

17 Speech on move to resolve pilots' pay dispute.

18 By Tony Tyler, Director Corporate Development."

19 There is then set out what is attributed to you. As  
20 far as you are concerned, are you satisfied that that  
21 document contains what you said on that occasion?

22 A. Yes.

23 Q. Would you please now turn to paragraph 6 of your witness  
24 statement, and then please turn to bundle VI, page 1482.

25 A. Yes.

1 Q. At this point we see a report, "CNN.com/WORLD", and in  
2 that report you will see that a number of things are  
3 attributed in inverted commas to you. But then when we  
4 come down to the penultimate paragraph in that report,  
5 just before another passage in quotes attributed to  
6 Mr John Findlay, there are three lines there which are  
7 not in inverted commas but which say this:

8 "The airline insists the sackings had nothing to do  
9 with the labour action, that they would have happened  
10 anyway because of an examination of the pilots'  
11 records."

12 Do you see that?

13 A. I do.

14 Q. In this case in the statement of claim of the  
15 plaintiffs, they have put those words in inverted commas  
16 and have attributed them to you. Your legal advisers  
17 have put in a nonadmission in relation to that. Now you  
18 have the opportunity and my learned friend will have the  
19 opportunity to cross-examine you about it, to give your  
20 evidence, as you have in your statement, as to that  
21 particular matter.

22 As I understand from paragraph 6, and I'd like you  
23 to look at that, because I want there to be no possible  
24 ambiguity about what is said there -- what you have said  
25 there is this:

1 "I understand that the plaintiffs are alleging that,  
2 as reported on the CNN website, I made a statement on or  
3 about 9 July 2001 that ..."

4 Then in inverted commas, because that's what they  
5 say -- and you then say:

6 "I do not recall having said this statement and  
7 these were not my words. First, I never used the  
8 expression 'sackings' or 'labour action'."

9 Then you made another observation there.

10 Will you please make sure that there's no ambiguity:  
11 what are you saying about that particular statement?  
12 Are you able to say whether you said that or not?

13 A. I don't remember, sir. As I said in my statement,  
14 I don't recall saying it and I did not use those words  
15 through the course of the briefings and comments that  
16 I made.

17 MR HUGGINS: Thank you. In that case, there is nothing that  
18 I need to clarify and Mr Grossman will have a number of  
19 questions of you.

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

21 Cross-examination by MR GROSSMAN

22 MR GROSSMAN: Mr Tyler, I understand from what you have said  
23 in your statement that you were not part of the  
24 decision-making process as to who to dismiss?

25 A. That's correct.

1 Q. You simply understood that you had been told by someone  
2 or some people that it was necessary to sack a number of  
3 people; is that the position?

4 A. I wasn't --

5 Q. Perhaps I will put it more clearly. Did you know in  
6 advance of being given a list of 49 people that a number  
7 of people were going to be dismissed?

8 A. I knew that the decision had been taken to review the  
9 records of the aircrew workforce, to identify those who  
10 were -- who the company had lost confidence in and in  
11 whom we couldn't rely. So I knew that the outcome of  
12 this process was likely to be the decision to terminate  
13 people, but I had no idea who it would be or how many.

14 Q. What did you understand the reason for the sacking of  
15 these 49 people was?

16 A. The company had been subjected to, over the past few  
17 years, indeed, an escalating amount of pressure from the  
18 union, exhibited by behaviour of pilots to attempt to  
19 disrupt the company's operations. Just prior to this  
20 particular episode, if you like, the union had announced  
21 a significant stepping-up of the pressure, and we in the  
22 company believed that we couldn't allow this to go on,  
23 in the interests of the company, and indeed the  
24 travelling public of Hong Kong, so therefore, as I think  
25 we said, some firm and resolute action was necessary.

1 Q. But why these 49?

2 A. I don't know why -- I wasn't involved in the process of  
3 identifying the particular pilots who were selected for  
4 contract termination, so I don't know why each  
5 individual one was selected, but I was aware there was  
6 a process of reviewing all the records.

7 Q. What did you understand was the reason for the sacking  
8 of these 49 people? Not talking about the individual  
9 but the group.

10 A. I think I have already explained that, that we felt some  
11 firm action was necessary on the part of the company to  
12 make sure that those pilots who we could not rely on to  
13 basically do their jobs and who we could not rely on  
14 to -- in whom we had lost confidence, to leave the  
15 company.

16 Q. I see. What did this have to do, if anything, with  
17 their union activities?

18 A. It had nothing to do with their union activities.

19 Q. Nothing whatsoever to do with their union activities?

20 A. We had selected them based on their behaviour, and as  
21 far as I was aware -- and I wasn't involved, as I say,  
22 personally in the process -- the union activities had  
23 nothing to do with this.

24 Q. Nothing to do with this? So these 49, then, would they  
25 have been dismissed anyway, irrespective of whether

1           there was contract compliance, whether there were any  
2           union activities?

3    A.   We don't, as I believe I've said in my witness  
4           statement, we don't as a matter of routine examine the  
5           files with a view to terminating contracts of  
6           employment. I think we've got to remember, this was in  
7           the middle of, if you like, a culmination of a long and  
8           escalating campaign of industrial action, disruption by  
9           some pilots --

10   Q.   But I understand you said industrial action had nothing  
11          to do with the sackings?

12   A.   These individuals were selected -- my understanding was  
13          these individuals were selected on the grounds based on  
14          their individual behaviour, as pilots for Cathay  
15          Pacific.

16   Q.   Would they have been dismissed whether or not there was  
17          industrial action?

18   A.   Well, it's a hypothetical question. As I've said, we  
19          don't, as a rule, just review, as a matter of routine,  
20          the files --

21   HIS LORDSHIP: I think, Mr Tyler, it's a "yes" or "no"  
22          question or "I don't know".

23   A.   In that case, I don't know.

24   MR GROSSMAN: All right. I will take it from there.

25            You were satisfied, were you, that these 49 were

1 deserving of being dismissed and publicly vilified?

2 A. Well, if I may, there are two questions in that.

3 Q. Yes, that's true.

4 A. The first one, was I satisfied that these 49 -- it was  
5 appropriate to terminate these contracts? I was  
6 satisfied that the process that had been gone through  
7 was thorough and was fair, and I trusted the individuals  
8 involved in that process. So yes.

9 Q. Did you think that the behaviour of these 49 was such  
10 that they deserved that a person like you and Mr Chen  
11 and Captain Barley would say to the aviation world and  
12 the world at large that they were troublemakers,  
13 unprofessional?

14 A. I don't believe I used those words. In fact I didn't  
15 use those words. We had a responsibility and  
16 a requirement to tell our staff, tell the travelling  
17 public what was going on and why we had taken various  
18 actions. As everybody knows, there was massive interest  
19 among the public, and of course our staff, in what was  
20 happening. So we had to give an explanation of what was  
21 going on.

22 Q. But if these people were dismissed because of nothing to  
23 do with their union activities, why was it necessary to  
24 even mention it to the public? Why not simply say to  
25 the public, "Well, we have taken internal measures and

1 we're satisfied that there are not going to be any  
2 problems with delays", et cetera?

3 A. Because the public -- it was not realistic to expect, in  
4 the interest -- to expect that one could satisfy the  
5 public interest in this with such an explanation. One  
6 had to say more than that.

7 Q. So, correct me if I am wrong, I don't want to be unfair,  
8 but essentially what you're saying is that you thought  
9 that these 49 people were not working in the interests  
10 of the company, or didn't have the interests of the  
11 company at heart?

12 A. That's correct.

13 Q. That would be a fair way of putting it, would it?

14 A. Yes.

15 Q. I just want to ask you about one particular aspect. Are  
16 you familiar with the Sunnyside Club?

17 A. Yes.

18 Q. What is it?

19 A. It is a club which exists to raise funds and assist in  
20 other ways; a home, called the Sunnyside Home, for  
21 severely disabled children.

22 Q. This is done from the point of view of goodwill from  
23 Cathay Pacific?

24 A. Cathay Pacific supports the club in a number of ways.

25 The members of the club are either all or mostly Cathay

1 Pacific staff.

2 Q. Yes. They do a fair amount, do they, to bring good  
3 public relations, put it that way, to Cathay Pacific?

4 A. Clearly the fact that the Sunnyside Club exists is  
5 obviously a good thing for Cathay Pacific and it's  
6 something that certainly internally everybody knows  
7 about, yes.

8 Q. And the people who run it presumably are doing so in the  
9 best interests of Cathay Pacific?

10 A. I think they're doing it actually in the best interests  
11 of the children who they are benefiting, and I support  
12 the club myself, so I mean --

13 Q. That's something you applaud, presumably?

14 A. Indeed.

15 Q. Are you aware that of these 49 the chairman and  
16 vice-chairman of the Sunnyside Club were sacked?

17 A. I am aware of that, they had their contracts terminated.

18 Q. You said they weren't acting in the best interests of  
19 Cathay Pacific?

20 A. I think their prime -- I think they were -- certainly,  
21 what they were doing for the Sunnyside Club was a very  
22 worthy activity. But their duties as far as their  
23 responsibilities to Cathay Pacific were concerned were  
24 to operate as pilots, and that was the grounds upon  
25 which we were evaluating their performance.

1 Q. Would you consider that doing that at least indicates  
2 they have the interests of the company at heart?

3 A. I believe what it indicates is that they have the  
4 interests of the children of that school at heart, and  
5 as you've said, that's a very merit-worthy thing.

6 HIS LORDSHIP: That's not quite an answer to Mr Grossman's  
7 question.

8 A. Sorry.

9 HIS LORDSHIP: He asked whether you believed whether they  
10 had, in working for the club, the interests of Cathay  
11 Pacific at heart as well as the interests of the  
12 children.

13 A. I don't believe that working for the club demonstrates  
14 necessarily that they had the interests of Cathay  
15 Pacific at heart, no.

16 MR GROSSMAN: Aren't you being a little unkind? Surely, if  
17 they are spending their spare time working on a matter  
18 which obviously they thought was worthwhile, the good  
19 publicity going to Cathay Pacific would indicate  
20 goodwill on their part towards the company?

21 A. I don't believe I'm being unkind. I think the people  
22 involved, clearly what they were doing for the Sunnyside  
23 Club was a very good thing, but they weren't doing it  
24 for Cathay Pacific, and what we needed from our pilots  
25 was behaviour as pilots which supported -- their prime

1 job, obviously, was not to do PR for Cathay Pacific, it  
2 was to act as pilots, and it was therefore on those  
3 grounds that their performance was assessed.

4 Q. In fact, one of the people who was dismissed used to fly  
5 the Cathay balloon, take it around the world, in his  
6 spare time, on vacation, showing a huge amount of Cathay  
7 Pacific publicity. Don't you think that was showing  
8 goodwill to --

9 A. Well, I think of course it was a good thing for the  
10 company, but it was also -- and I'm not aware who you're  
11 talking about, but generally speaking several pilots  
12 over the years have done this, it was a hobby of theirs,  
13 and of course the company assisted them in their hobby,  
14 indeed you might say funded it, by providing the  
15 resources to do it, and probably some time off to  
16 assist. And certainly the company benefited from the  
17 PR, so I think it was somebody that benefited everybody.

18 Q. Come on, Mr Tyler. You've got a situation here where  
19 one of the persons, who also happened to be the chairman  
20 of the Sunnyside Club, was going around the world, in  
21 his spare time, not on Cathay Pacific's time, and flying  
22 this balloon which had "Cathay Pacific" circled round  
23 it; huge publicity for Cathay Pacific. Is that not  
24 showing interest, goodwill, towards the company?

25 A. Well, I'm sure that these things were taken into account

1 by the group of people who were -- I mean, everybody  
2 will have known that. I can only assume that that sort  
3 of thing would have been known by the gentlemen and  
4 others in the flight operations department who were  
5 largely involved with the process.

6 Q. Well, we have seen a lot of documentation here.  
7 I haven't seen anybody here saying Mr Gage and  
8 Mr Fitz-Costa, for instance, were doing a lot of good  
9 work for the company. Does that surprise you?

10 A. Does it surprise me that --

11 Q. That there is nothing in writing, no document, in all  
12 these thousands of documents we have seen, that  
13 indicates that that was taken into account, that anybody  
14 thought about it?

15 A. Well, I haven't reviewed -- I don't know what is in all  
16 these many documents. I don't have any view on it.

17 Q. Does it surprise you that there's no record of it?

18 A. In these documents --

19 Q. Yes.

20 A. No, it doesn't.

21 Q. It doesn't? All right.

22 Now I want to ask you about some of the things that  
23 were said. To make sure I don't overstep it and deal  
24 with things that perhaps aren't in the pleadings, I'm  
25 just going to go to the pleadings.

1           Look at bundle I, please.

2   A.   I(A) or (B)? I've got two.

3   Q.   I think I(A). I'm only going to deal with matters that  
4       the pilots actually allege were said, which are not in  
5       dispute.

6           Turn, please, to page 6. You see in  
7       subparagraph (9) it says -- and this is admitted on your  
8       side, so don't worry about it:

9           "... [Mr Tyler] stated that the dismissals of the  
10       aircrew officers were the result of a review of pilots'  
11       records begun 'a few days ago when the union made it  
12       clear it was going to escalate industrial action'."

13         Do you see that?

14   A.   Yes.

15   Q.   This was a direct consequence of the industrial action,  
16       the sacking --

17   HIS LORDSHIP: This statement or the dismissal?

18   MR GROSSMAN: The dismissals.

19   A.   Sorry, is that a question?

20   Q.   Yes.

21   A.   Sorry, would you mind repeating it?

22   Q.   Yes, of course. What you said was "a few days ago when  
23       the union made it clear it was going to escalate  
24       industrial action".

25           Sorry, let me start again:

1            "... [Mr Tyler] stated that the dismissals of the  
2            aircrew officers were the result of a review of pilots'  
3            records begun 'a few days ago when the union made it  
4            clear it was going to escalate industrial action'."

5            A. Yes.

6            Q. Just pausing there for the moment, the review was  
7            specifically consequent upon the industrial action that  
8            the union said it was going to escalate?

9            A. That's right.

10          Q. So would it be right to say, therefore, that the  
11          dismissals did have something to do with the industrial  
12          action?

13          A. Well, yes. Clearly, as I've said, we wouldn't have been  
14          undertaking this if we weren't in a position where the  
15          company was under great stress and pressure as a result  
16          of the actions being taken by the pilots, and those  
17          actions were, as we all understood, instructed by the  
18          union.

19          Q. All right. You then go on to say:

20                    "Hong Kong is tired of being held to ransom."

21                    Held to ransom by whom? Who did you have in mind?

22          A. What was happening was that the pilots who were  
23          disrupting our operations were -- it's, if you like,  
24          a colourful turn of phrase -- but to imply that travel  
25          in and out of Hong Kong was being disrupted by the

1 pilots taking this action.

2 Q. I'm not concerned so much about being held to ransom.

3 There is no criticism of that. One understands. I want

4 to know, who was holding Hong Kong to ransom?

5 A. The pilots who were seeking to disrupt company

6 operations.

7 Q. Those are the 49 who were dismissed?

8 A. It certainly included those people, as I understood it.

9 Q. It included the 49?

10 A. As I -- yes.

11 Q. So we can assume, therefore -- this what you were told,

12 was it?

13 A. Yes.

14 Q. That these 49 people were holding the company to ransom?

15 A. Yes.

16 Q. Or were amongst those?

17 A. Amongst them, yes.

18 Q. "We believe it was time for some form of resolute

19 action."

20 This resolute action was to dismiss these people, or

21 49 of them, anyway?

22 A. Yes.

23 Q. All right. Then at (9A) is set out the press release,

24 which I think Mr Huggins showed you. Do you see that?

25 A. I do.

1 Q. All right. That was on your website -- until when,  
2 Mr Tyler?

3 A. I don't know.

4 Q. I can tell you. It was on your website until  
5 12 September 2009. That's the evidence. Why?

6 A. I don't know, but I imagine that when the things are put  
7 on the website, they stay there unless they are  
8 specifically taken off. I imagine that they're  
9 gradually, as it were, buried by other press releases  
10 that come along later on. But I would imagine that is  
11 why it remained there: nobody thought to take it off.

12 Q. These 49ers, as they became known, famously, throughout  
13 the world, are still referred to, or they were referred  
14 to until a couple of weeks ago, on your website. Don't  
15 you think that's appalling? Anybody who wanted to find  
16 out about them, what was going on, if they applied for  
17 a job and looked up the Cathay Pacific website, could  
18 see your statement.

19 A. I'm not denying that they can do that. The statement  
20 doesn't, of course, mention anyone by name.

21 Q. Of course not, but I think you know perfectly well that  
22 the word "49ers" became notorious in the aviation world?

23 A. It was not the name the company used ever, certainly in  
24 public.

25 Q. Mr Tyler, you know perfectly well that the word "49ers"

1 became notorious in the aviation world; is that right?

2 A. I don't know. It certainly was well known in Hong Kong.  
3 How notorious it is around the aviation world, I don't  
4 know.

5 Q. All right. Well, we have heard evidence about that  
6 anyway.

7 Let's have a look at what you said:

8 "Cathay Pacific cannot simply stand by and allow the  
9 [union's] selfish action to cause such damage."

10 All right? So your complaint here, the first line  
11 is about the union, not the 49ers, not the 49 people,  
12 but about the union?

13 A. That's what it says, yes.

14 Q. "Nor is Hong Kong prepared to tolerate such disruptions  
15 by the [union] on what seems to be a repeated basis."

16 Do you see that?

17 A. Yes.

18 Q. Did you have in mind when you were saying that, or did  
19 you have in mind -- when you talked of the union, you  
20 were talking about these 49 people?

21 A. We were talking about all the pilots who were  
22 participating in this disruption.

23 Q. All the pilots, which includes the 49, and the 18 that  
24 I represent?

25 A. I did not, of course, have in mind specific individuals.

1 Q. No. Then it says:

2 "Under the circumstances, we need to take prompt and  
3 firm action to resolve the situation for the good of all  
4 our employees, our customers, our shareholders, the  
5 tourism industry and the whole of Hong Kong ... We were  
6 frustrated that union leadership blocked our earlier  
7 proposal."

8 So your complaints here still, it seems to me, were  
9 about the union, all right?

10 A. Yes. There is a sort of gap there, so --

11 Q. All right.

12 A. But certainly, clearly I said these words.

13 Q. "Sadly, we have also taken the very painful decision to  
14 terminate the employment of 49 of our pilots. This is  
15 in addition to the three cases previously announced.

16 Thus, today, we have issued letters of termination  
17 to these pilots."

18 It is perfectly clear, is it not, that you linked  
19 the sacking, the dismissal of these pilots to the union  
20 action, the actions taken by the union?

21 A. It's certainly clear that if there wasn't this action  
22 going on, this would not have happened.

23 Q. No, no, no. What you say is, and I'm summarising,

24 "These people are holding us to ransom, the union is  
25 holding us to ransom, there's a body of people holding

1 us to ransom, thus we have decided to dismiss them"?

2 A. We decided to review the records. Because of the union  
3 action we decided to review the records of all pilots,  
4 and we didn't know whether they were union members or  
5 non-union members -- really that was not  
6 a consideration -- and terminate the contracts of those  
7 whom we felt we could not rely on and in whom we had  
8 lost confidence.

9 Q. Mr Tyler, what you are saying in this press release,  
10 which from the evidence had very wide circulation, is,  
11 "There was union activity which we believed was going to  
12 cause disruption, and thus we decided to sack the 49  
13 pilots"?

14 A. Well, the press release says what it says.

15 Q. Yes. Very well.

16 HIS LORDSHIP: If you feel like it, Mr Grossman, just point  
17 to the actual words, because as Mr Tyler points out,  
18 there are three dots. It may be clear from the actual  
19 text on page 1476. It may also explain the word "also"  
20 in "Sadly, we have also taken". Page 1476, Mr Grossman.

21 MR GROSSMAN: It's in bundle VI.

22 HIS LORDSHIP: We were looking at it earlier.

23 MR HUGGINS: 1476 to 1477.

24 HIS LORDSHIP: I think what you are after, Mr Grossman, is  
25 the sixth bullet point from the bottom of the page:

1           "Therefore, after extremely careful consideration we  
2           have decided on two courses of action."

3           First, and then you move to the second.

4           Now, if you want to put any particular question,  
5           Mr Grossman.

6   MR GROSSMAN: Thank you very much.

7           Mr Tyler, quite rightly, I have been asked to show  
8           you the whole of this press release. Simply to save  
9           time, I don't want to analyse it all, but you read it as  
10          you wish. I simply will suggest to you that it is  
11          perfectly clear here that what you are saying is,  
12          "Because of the union disruption, we have decided to  
13          sack 49 people".

14   A. Well, if you like, the "... " missing words relate to the  
15          other thing we did, which was to do with giving pay  
16          raises and improving rostering practices and so on. As  
17          I say, the rest of the words really -- I mean, the words  
18          say what we honestly and truthfully meant them to say.

19   HIS LORDSHIP: But the answer to Mr Grossman's question,  
20          Mr Tyler -- he says, because of the union's action, you  
21          did two things: you point out, first, there was the pay  
22          rise; and then second, there was also the sacking of the  
23          49 pilots. Is that a correct reading by Mr Grossman?  
24          Do you say that's a wrong reading?

25   A. It's putting it into different words, but it's

1 essentially correct.

2 HIS LORDSHIP: Right. Mr Grossman?

3 MR GROSSMAN: Thank you. I'm just going to continue.

4 If we could turn to page 7 of the pleadings, please.

5 By all means, if you want to keep that press statement

6 open, do so, but I want to look at page 7 of the

7 pleadings. That's bundle I. Take your time.

8 This is the continuation, and this is what it says:

9 "We have taken this serious step only after

10 extremely careful consideration. We have undertaken

11 a detailed review of the employment history of all our

12 pilots and identified those who, we feel, cannot be

13 relied upon to act in the best interests of the company

14 in the future."

15 Pause there. Is that right?

16 A. Yes.

17 Q. That's correct, is it? So we can take it, then -- and

18 we will look at some of them -- that on the basis of

19 their history, those 49 people, you couldn't rely upon

20 to act in the best interests of the company in the

21 future?

22 A. Yes.

23 Q. "We have, essentially, lost confidence in those

24 employees who have been terminated and decided their

25 continued employment by the company is no longer in the

1 best interests of the company as a whole."

2 Yes?

3 A. (Witness nodded).

4 Q. "Hong Kong is tired of being held to ransom. The time  
5 has come for prompt and resolute action. This is what  
6 we have done."

7 A. Yes. I can't see it here, but --

8 Q. If what is said here is not in context, I am sure that  
9 Mr Huggins, if he thinks it necessary, will ask you.

10 MR HUGGINS: I won't interrupt at all.

11 HIS LORDSHIP: There's a "... " at the moment between the  
12 paragraphs. It's not clear from the pleading. Go  
13 ahead, Mr Grossman.

14 MR HUGGINS: I would however say, since my learned friend  
15 has offered me to interrupt, I will do it only in one  
16 respect. I am bound to say I think it's fairer to the  
17 witness to ask these questions by reference to the  
18 document itself, because that puts it in full  
19 perspective, but of course it's entirely a matter for my  
20 learned friend how he goes about it. I simply make that  
21 observation.

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

23 MR GROSSMAN: Yes, I hear what my learned friend says, but  
24 I don't want to, as identify said, do an analysis of  
25 this whole document because most of it is not relevant.

1 HIS LORDSHIP: You do what you want, Mr Grossman, and  
2 Mr Huggins can re-examine as he sees fit.

3 MR GROSSMAN: Thank you very much, my Lord.

4 Mr Tyler, you're making it clear, are you not,  
5 here -- I think you have agreed but I'm just reading it  
6 through here:

7 "Hong Kong is tired of being held to ransom."

8 What you are saying is these 49 people were holding  
9 Hong Kong to ransom.

10 A. I think I have said this a few minutes ago. The pilots  
11 who were participating in this campaign were holding  
12 Hong Kong to ransom and I believe that these 49 were  
13 included in that number.

14 Q. But the 49 were the ones specifically you were referring  
15 to here, because you had been talking about the 49 who  
16 were dismissed.

17 A. I'd like to see where it is in the press release,  
18 because --

19 Q. By all means.

20 HIS LORDSHIP: The second page, 1477, the third bullet point  
21 from the bottom of the article.

22 A. I think -- no, I'd like to -- in the construction -- and  
23 I don't want to get into the detailed parsing, this  
24 whole thing, but in the construction there, I was  
25 talking there about generally the situation.

1 I said, "Look, we have done these two things".  
2 I described what they were. "We have taken the step  
3 after a lot of consideration". Then I, if you like, at  
4 the end of the thing, and this is near the end, if you  
5 like, have generalised the situation and just said,  
6 "Hong Kong is tired of being held to ransom." I wasn't  
7 in my mind specifically referring to the pilots whose  
8 contracts had been terminated that day. It was the  
9 general situation that was going on.

10 MR GROSSMAN: But it says here specifically, both at  
11 page 1477 and what is set out in page 7 of volume I --

12 HIS LORDSHIP: I think he has given his answer, Mr Grossman.  
13 I can read the article and I can decide what  
14 a fair-minded person reading it would decide.

15 MR GROSSMAN: Please continue at page 7. I think you can  
16 put away that document for the moment. I'm not going to  
17 ask you about it again. Look on page 7, at (9B).  
18 I just want to go through this with you.

19 On 9 July, an article in the South China Morning  
20 Post quoted you as saying:

21 "'The review, which stated a few days ago, was  
22 prompted by the union making it clear industrial action  
23 could last as long as a year'."

24 I think this is in accord with what you have told  
25 us.

1 A. No, it should be "started a few days ago".

2 Q. That's right. So the review was tied up with the  
3 industrial action? That's simply the point I am making.

4 A. Yes.

5 Q. Then at (9C), the first part of that before we get to  
6 the dots, I don't think is in dispute. You are quoted  
7 as saying:

8 "The reason why we made these decisions yesterday  
9 ... we decided we were not prepared to accept what the  
10 union was saying, that the dispute would go on until the  
11 company's resources were drained ... we felt that firm  
12 and resolute steps were necessary."

13 What you are saying here perfectly clearly is, "We  
14 were fed up with the union, so we sacked these 49  
15 people". That's what you said.

16 A. That's putting words in my mouth that I didn't say, but  
17 that's --

18 Q. Is there any other way to describe it?

19 A. We were not prepared, as a company, to see the future of  
20 our company threatened by what we believed to be  
21 unreasonable actions by a number of our staff. That is  
22 why we took the decision to terminate the contracts of  
23 a number of staff who we believed we couldn't rely on in  
24 future to support the company.

25 Q. They were acting unreasonably?

1 A. I believe they were.

2 Q. We'll look at some of them and you can explain what was  
3 unreasonable about what it was alleged they did.

4 Then the second part, which you deny; I understand  
5 that.

6 "... the sackings had nothing to do with the labour  
7 action, that they would have happened anyway because of  
8 an examination of the pilots' records."

9 You say you didn't say that?

10 A. Those are not my words. I didn't say that.

11 Q. Did you ask them to correct it?

12 A. No. I don't -- but I can't remember. I doubt it.

13 There was so much going on and I personally would not  
14 necessarily have even read the thing when it happened,  
15 when it came out.

16 Q. Before we look at your statement, I just want to ask you  
17 this: would it be right to say that the resolute action  
18 that you were taking was a warning -- put it that way --  
19 to the other pilots not to engage in the industrial  
20 action that was being planned?

21 A. That was not the intention of what we were doing. I've  
22 explained why we did it.

23 Q. Surely that was the intention. You were saying, "We've  
24 got to take resolute action, we've got to get rid of the  
25 troublemakers and we are saying to everybody else, 'If

1           you carry on doing what you are doing, you are going to  
2           be sacked also'."

3           Isn't that effectively what you are saying?

4   A.   Effectively it operated as a warning, of course, but the  
5       prime concern that we had was to try to stop this  
6       industrial -- sorry, stop this disruption that was going  
7       on through the -- by a number of pilots.

8   Q.   Yes, by complying with the contract?

9   A.   Indeed.

10   Q.   Was it the unreasonable actions that were causing delays  
11       or was it the industrial action that was causing delays?

12   A.   What was causing delays and damage to the company was  
13       the actions of individual pilots. That's what was  
14       causing the delays.

15   Q.   Was it the industrial action or was it the unreasonable  
16       behaviour of these 49 people?

17   A.   Well, of course it's behaviour by individuals which  
18       causes problems.

19   Q.   Was it the industrial action that they were engaging in,  
20       or not? Can you answer that?

21   A.   If they were doing these -- if the industrial action was  
22       intended to tell them what to do, how to disrupt the  
23       flights -- but what was actually causing delays, of  
24       course, is action by individuals.

25   Q.   Is what, sorry? I didn't hear the last --

1 A. Is the action by the individuals or the inaction by  
2 individuals.

3 Q. The reason I ask you this, it's not simply out of  
4 context, but if you turn to page 9 and what  
5 Captain Barley said, and look in the first paragraph:

6 "The shareholders of this private Company, in this  
7 part of China are concerned about the preservation of  
8 the [airline's] ... travel rights. If the company had  
9 adopted a 'do nothing' strategy and simply allowed the  
10 industrial action to delay or cancel flights, for  
11 an indefinite period, we could have found our routes  
12 being taken up by other airlines ..."

13 Captain Barley apparently had no concerns about  
14 that. He seemed to think clearly it was the industrial  
15 action that was causing the problems. Do you disagree  
16 with what he said?

17 A. I think it's a way of putting it.

18 Q. But do you disagree with what he said?

19 A. No, I don't.

20 Q. You don't. All right. If you would go to page 10,  
21 there's a quotation, 28 September 2001, entitled  
22 "Bulletin - Talks about Talks", by Captain Barley. Look  
23 at the last paragraph. I'm not going to read the first  
24 part.

25 "We have a great many pilots whose loyalty to Cathay

1 Pacific is above question. Unfortunately, there are  
2 those whose commitment does give cause for concern."

3 Pausing there, I think you probably would agree with  
4 that because that's what you've been saying.

5 A. Yes.

6 Q. "From this point forward we have little choice but to  
7 demonstrate far less tolerance towards any pilot who  
8 undertakes industrial action that is contrary to the  
9 company's interests."

10 Do you agree with that?

11 A. Yes.

12 Q. That was the purpose of sacking these 49, dismissing  
13 these 49 people, wasn't it?

14 A. The purpose of dismissing these particular pilots was  
15 because we'd lost confidence in them, we couldn't rely  
16 on them in future, we didn't want to have staff in the  
17 workforce on whom we could not rely and in whom we had  
18 lost confidence.

19 Q. Mr Tyler, basically what is being said here, under the  
20 rubric of Cathay Pacific, is, "Look, you do anything  
21 that Cathay Pacific doesn't like and you're going to get  
22 sacked". That is what Captain Barley is saying; I've  
23 put it in cruder terms, but that is exactly what he is  
24 saying, is it not?

25 A. It's not exactly what he's saying. He is saying that we

1 will be less tolerant towards pilots who disrupt the  
2 airline. We had been putting up with it for several  
3 years, and we were just announcing that in future we  
4 were going to be less tolerant.

5 Q. Then he says:

6 "If you have any trouble interpreting company's  
7 interest, then my advice is really simple. Do your job  
8 in accordance with normal custom and practice, and to  
9 the best of your ability."

10 Of course you didn't write this, I understand, but  
11 it reflects, let me say, the Cathay philosophy about  
12 this incident?

13 HIS LORDSHIP: Just explain what you say that philosophy is.

14 MR GROSSMAN: All right. Let me put it a different way,  
15 my Lord. Thank you very much.

16 Do you agree, first of all, with what Captain Barley  
17 was saying?

18 A. Yes.

19 Q. I suggest to you that you know perfectly well that what  
20 he was saying was, "You do what we want, or else you're  
21 going to go the same way as the other 49ers".

22 A. He's saying -- and he says it in his words, his advice  
23 is very simple; "Just do your job in accordance with  
24 normal custom and practice, to the best of your  
25 ability". That's what he is saying. People will

1 interpret it however they wish, but that's what he is  
2 saying and I agree with what he is saying. That's his  
3 advice to his pilot workforce, "Please get on with the  
4 job and do it properly".

5 Q. We have had 16 witnesses so far, all of whom have said  
6 without challenge, "I was just doing my job". Did you  
7 know that?

8 A. I haven't followed this --

9 MR HUGGINS: I don't think it is appropriate for my learned  
10 friend to comment on what I have said and where I am  
11 coming from. Submissions will be made in due course  
12 about that.

13 HIS LORDSHIP: Mr Grossman.

14 MR GROSSMAN: Would it be true to say that whatever  
15 criticism you have of these 49ers, you would accept that  
16 they were fully professional in their jobs as pilots?  
17 You don't have a complaint about their professionalism?

18 A. I -- let me first of all say, I have not personally --  
19 I'm not personally acquainted with the performance in  
20 their jobs of these individuals, so I'm not sure I can  
21 answer that question.

22 Q. All right. Let me put it this way: would it be fair to  
23 say that it's never been a suggestion to you, and you  
24 have no reason to think that these 49 people were  
25 anything other than fully professional in their job?

1 A. I am confident because I know that Cathay Pacific takes  
2 very seriously its training, its management of the  
3 technical aspects of flying aircraft and other  
4 operational issues, that they were technically very  
5 professional and proficient, in the technical sense.

6 Q. Thank you. Perhaps you would have a look at your  
7 statement, which is in bundle X. I think you were shown  
8 it --

9 HIS LORDSHIP: Can we put away bundle I?

10 MR GROSSMAN: Yes, please.

11 Just before we do that, one thing I just want to ask  
12 you about: when you made these various statements we  
13 have been looking at, do they refer to these 49 people,  
14 amongst others?

15 A. I think I would have to know which statements.

16 Q. Well, all of them. All the statements.

17 A. In some senses they are referring to individuals, or the  
18 collection of individuals known as the 49ers. In other  
19 cases it refers more generally to the pilot body, and in  
20 other cases more generally to those pilots who were  
21 seeking to disrupt the company operations. I --

22 Q. When you're talking about those who were seeking to  
23 interrupt the company's operations, I think we have  
24 already established that we are talking about the 49ers,  
25 the 49 that were dismissed.

1 A. Well, they were among those. There may have been  
2 others.

3 Q. When you were being critical of the people who were  
4 disrupting Cathay's performance --

5 A. Would I have been critical?

6 Q. No. When you were being critical of those people who  
7 were disrupting Cathay Pacific, did you include those  
8 49 people?

9 A. I didn't have in my mind those particular people.  
10 I was -- generally all those who were disrupting  
11 Cathay's operations.

12 Q. All those did, of course, include the 49ers?

13 A. Yes.

14 Q. You have told us, and you say in your statement also,  
15 that you were starting to lose millions a day, or a lot  
16 of money, anyway.

17 You did say in your evidence that you were losing  
18 a large amount of money.

19 A. Sorry, where did I say that?

20 Q. You said it in court yesterday. Were you losing money?

21 A. Sorry, I didn't say it, but we were losing --

22 Q. Of course you didn't. My apologies. It was Mr Rhodes.

23 A. Well, the company was losing a lot of revenue, yes,  
24 because of this campaign.

25 Q. Yes. Quite right.

1 I wonder if you would look, please, in bundle X at  
2 page 211.

3 HIS LORDSHIP: Bundle X is the bundle that your statement is  
4 in.

5 A. Page 211.

6 MR GROSSMAN: Yes.

7 A. I have it.

8 Q. This is one of a series of letters that were being put  
9 out by the union, all signed by Captain Demery.

10 I just want to ask you about one thing here, under  
11 the heading "Contract compliance"; do you see that?

12 A. Yes.

13 Q. The date you will see at the bottom, and that is  
14 12 June?

15 A. 12 June, yes.

16 Q. So contextually, you understand when this was being sent  
17 out?

18 A. Sure.

19 Q. What it says is:

20 "Contract compliance continues to apply added  
21 pressure to the commercial operation. Management would  
22 love you to believe that it is having no effect, so that  
23 you release the pressure."

24 I want to ask you about that. Were you, was  
25 management telling the staff, "Look, it's having no

1 effect"?

2 A. I don't remember what we were saying at the time.

3 Q. It's true, I think, and I think others have said it,  
4 that there was a lot of -- some people called it  
5 propaganda -- being distributed by both sides, union and  
6 management, and what has been produced here are the  
7 letters from the union. Do you remember if management  
8 were also sending out letters to their crew and to  
9 staff?

10 A. Certainly to the crew.

11 Q. But you don't recall them saying, "Look, it's not  
12 working, so don't do it because we are not losing any  
13 money"?

14 A. I don't remember what the content was or whatever it  
15 was.

16 Q. Look at paragraph 7 of your statement, please.

17 HIS LORDSHIP: That's page 80-3?

18 MR GROSSMAN: Page 80-3, yes.

19 A. I have it.

20 Q. This is the paragraph that starts, "I was not personally  
21 involved". Do you see that?

22 A. Yes.

23 Q. Five lines down, I want to read this:

24 "From my own perspective, anyone who had been ready  
25 and willing to support and implement the industrial

1 actions proposed and encouraged by the union, including  
2 the contract compliance campaign and the go-slow  
3 campaign through the maximum safety strategy in order to  
4 pressurise the airline in furtherance of the union's  
5 demands, could not be relied on to have the best  
6 interests of the airline at heart."

7 That's correct, is it?

8 A. Yes.

9 Q. Do you know 92 per cent of the people voted to  
10 participate in this limited industrial action?

11 A. I didn't. I mean, I may have known that number once.  
12 I've forgotten if that was the number.

13 Q. You knew it was extremely high?

14 A. I knew that the vote was very high for supporting the  
15 contract compliance --

16 Q. You can take it from me, I don't think there is any  
17 dispute, that 92 per cent voted in favour of the  
18 resolution to take limited industrial action. Do you  
19 say that not one of those persons could be relied on to  
20 have the best interests of the airline at heart?

21 A. I believe -- not -- of course, voting is one thing.  
22 Taking part in the thing is a bit different, and  
23 certainly I doubt if as many as that actually took part.  
24 But certainly it would raise questions in my mind, if  
25 somebody was taking part and supporting and implementing

1 the industrial actions, it raises the question: can this  
2 person be relied on to have the best interests of the  
3 airline at heart?

4 Q. So if the 92 per cent who voted in favour of it, all  
5 decided, to one degree or another, to participate in  
6 MSS, do you say that 92 per cent of your pilots didn't  
7 have the interests of the airline at heart? That's what  
8 I'm trying to --

9 A. I'm saying, because we could not rely on those who  
10 participated to have the best interests of the airline  
11 at heart.

12 Q. And are you satisfied in your mind, from what you've  
13 been told, that the 49 who were dismissed all  
14 participated in contract compliance and maximum safety  
15 strategy?

16 A. I am satisfied that the 49 who we identified and had  
17 their contracts terminated could not be relied on to  
18 have the best interests of the airline at heart, and  
19 I am satisfied that the thorough process of the review  
20 of their performance had taken place. I don't know  
21 specifically whether individuals did or did not take  
22 part in these particular campaigns.

23 Q. I'm just a bit surprised at your statement, then.  
24 What's the relevance of it in your statement? We are  
25 talking here about why these people were dismissed, and

1           you say:

2                   "From my perspective, anybody who is ready and  
3           willing to support and implement the industrial actions  
4           could not be relied on."

5                   You have no idea whether these 49ers participated or  
6           not.

7   A.   Well, I think I have answered in my statement --

8   HIS LORDSHIP:   I think he said he doesn't have any  
9           particular idea in respect of any particular pilot.

10   MR GROSSMAN:   Thank you, my Lord.

11   HIS LORDSHIP:   He was satisfied about the process, the  
12           integrity of the process, but he has no particular  
13           knowledge about any particular pilot.

14   A.   That's correct, my Lord.

15   MR GROSSMAN:   I want to change the subject to something that  
16           might be a bit easier.

17                   I want to ask you about the benefits that a pilot  
18           would receive, in general.  If you're not able to answer  
19           it because it's not within your field of management,  
20           please tell me and I will ask someone else.

21   HIS LORDSHIP:   That's the benefits in 2001?

22   MR GROSSMAN:   Yes, in 2001.

23                   As I understand it, under the contract of service  
24           with Cathay Pacific, the plaintiffs were entitled to  
25           a range of benefits?

1 A. Yes.

2 Q. In addition to their basic wage?

3 A. Yes.

4 Q. I'm going to go through them. Tell me if I have any of  
5 them wrong.

6 A. Well, I'll do my best.

7 Q. If you can't, please, that's fair enough. Given rental  
8 allowances?

9 A. Yes, most of them, certainly. The ones on non-local  
10 terms, yes, which was the vast majority.

11 Q. Those on local terms would be what, Hong Kong Chinese  
12 people, basically?

13 A. They would be people recruited on local terms here in  
14 Hong Kong.

15 Q. They were given an annual bonus?

16 A. Under the contracts, all staff are entitled to a 13th  
17 month under certain conditions, subject to -- I can't  
18 remember the exact wording, but it is subject to the  
19 company's financial performance in some way or other.

20 Q. I see. Overtime pay, which I think is called excess  
21 flying pay?

22 A. Yes.

23 Q. That was divided into extra productive hours and credit  
24 hours?

25 A. I'm sorry, I don't know the details of the scheme.

1 Q. Were they given something called duty pay? You don't  
2 know? If you don't know --

3 A. There is some hourly -- I can't remember what it's  
4 called. There is some amount they get per hour.

5 Q. I promise you I'm not --

6 A. I don't know what it's called.

7 Q. I'm not going to press you -- I'll ask someone else --  
8 if you don't remember. Outport allowance?

9 A. When they stay in hotels overseas overnight they receive  
10 allowances, yes.

11 Q. Profit sharing?

12 A. Subject to the company making a profit, according to the  
13 terms of that scheme, yes.

14 Q. How does that work?

15 A. The formula has been changed over the years, but we look  
16 at the results, financial results for each year of the  
17 company, we apply the formula, which can be changed at  
18 the discretion of the company, and we pay whatever the  
19 entitlement happens to be, if there is one.

20 Q. Education allowance?

21 A. Yes.

22 Q. Travel allowances?

23 A. I believe some pilots had travel allowances, yes. Not  
24 all, but some, depending when they were hired, and so  
25 on.

1 Q. If you're not sure about it, I'll ask someone else.

2 They had medical coverage?

3 A. Yes.

4 Q. A provident fund?

5 A. Yes.

6 Q. And overnight allowance?

7 A. I think those are the same --

8 Q. Is that the same as --

9 A. I think that is the same as -- you asked me about  
10 outport allowances I think.

11 Q. Mr Tyler, have you ever suggested -- I'm going back to  
12 something I asked you before -- that any of these pilots  
13 who were dismissed were unprofessional?

14 HIS LORDSHIP: I think you have asked that previously. It  
15 is a slightly different question. You said "have you  
16 ever suggested". You asked whether he thought that they  
17 were professional, and he said, to his mind, given  
18 Cathay Pacific's training, he was confident they were  
19 technically professional, but this is slightly  
20 different.

21 MR GROSSMAN: Thank you.

22 Have you ever suggested that they were  
23 unprofessional?

24 A. I don't believe I've ever used that word.

25 MR GROSSMAN: Thank you.

1 HIS LORDSHIP: Mr Huggins?

2 MR HUGGINS: I have no re-examination. Thank you, my Lord.

3 HIS LORDSHIP: Thank you.

4 Thank you very much for giving evidence this  
5 morning, Mr Tyler.

6 MR HUGGINS: My Lord, I now call Mr Philip Chen Nan Lok.

7 MR PHILIP CHEN NAN LOK (sworn)

8 Examination-in-chief by MR HUGGINS

9 Q. Mr Chen, we haven't met before, but can I ask you,  
10 please, to speak up, not just for my benefit but there  
11 are people at the back of the court who are entitled to  
12 hear what you say and would want to hear what you say.

13 A. Yes.

14 Q. Could you please take two bundles that are there, one,  
15 bundle X, which contains your statement, and also  
16 bundle VI. Can you see one which says "Bundle VI"?

17 A. Yes.

18 Q. Could you first, Mr Chen, go to bundle X, and turn to  
19 around page 80. You should find, around page 80, there  
20 has been inserted documents which begin 80-1, and I'm  
21 going to ask you to try and find 80-5, where your  
22 statement begins. Take your time; don't rush.

23 A. That is correct.

24 Q. It begins at 80-5, and there are three pages of it. The  
25 third page has the date 8 October 2009. Is that your

1 signature?

2 A. That's correct.

3 Q. Will you confirm to his Lordship that the contents of  
4 this statement are true and honest?

5 A. Yes, my Lord.

6 Q. And you are content that this should go forward as part  
7 of your evidence in these proceedings?

8 A. Yes.

9 Q. Can I, just to help identify one or two of the  
10 statements that you are referring to there in the  
11 bundles -- if you go to paragraph 5 of your statement,  
12 please, you will see reference first of all to a public  
13 statement attributed to me as identified in a particular  
14 paragraph in the statement of claim.

15 Could I just ask you to turn in bundle VI, please,  
16 to page 1479. Do you see there a publication,  
17 "Hong Kong iMail" -- do you see that?

18 A. Yes.

19 Q. If you just read the first few lines, you will find in  
20 the third line a reference to you, Philip Chen Nan Lok.  
21 Can you just get to that.

22 A. Yes.

23 Q. "Philip Chen Nan Lok, a Cathay Pacific director and  
24 chief operating officer, announced the sackings, saying  
25 it was a tough decision."

1           Then they open inverted commas:

2           "'We cannot allow this group to disrupt the airline,  
3           its employees, our customers or the reputation of  
4           Hong Kong. Nor can we allow this group to let the much  
5           larger numbers of our flight crews who are showing the  
6           total professionalism we require -- suffer', he said."

7           Turning to paragraph 5 of your statement, will you  
8           confirm that that is what you are referring to in  
9           paragraph 5 of your statement?

10    A.   That's correct.

11    Q.   You have said there:

12           "Given the passage of time, I cannot now recall  
13           whether I did or did not make such statement at the  
14           time."

15           Is that the truth of the matter?

16    A.   That's the truth.

17    MR HUGGINS: My Lord, can I tell your Lordship, as counsel  
18           for the defendants, that an admission has been made in  
19           the pleadings to that effect, and I as counsel think it  
20           would be quite inappropriate to even contemplate any  
21           suggestion of withdrawal of that admission. That would  
22           involve all kinds of adjournments, having to go back and  
23           find the iMail reporters and so on, and therefore that  
24           would not be fair to the plaintiffs at all, and we  
25           should proceed on the basis of that admission.

1 I hope that meets with your Lordship's approval.

2 HIS LORDSHIP: That's fine, Mr Huggins. I understand the  
3 position. Mr Chen can't recall whether or not he  
4 actually made that statement.

5 MR HUGGINS: I only said what I did --

6 HIS LORDSHIP: It is just a fact of life.

7 MR HUGGINS: -- because I didn't want my learned friend for  
8 a moment to think that he had to trouble pursuing that  
9 particular aspect. It's an admission that has been made  
10 and we stand by it.

11 HIS LORDSHIP: What I also want to understand from that, Mr  
12 Huggins, is if he made that statement, Mr Chen doesn't  
13 resile from the gist, the meaning of that statement.

14 MR HUGGINS: Absolutely, my Lord.

15 In paragraph 6 of your statement, Mr Chen, can we  
16 just identify for all concerned what statement you are  
17 referring to there, when you say:

18 "In my statement to all flight crew on the same day  
19 I sought to convey that the airline was only prepared to  
20 take the airline forward with pilots who we believed had  
21 the best interests of the company at heart."

22 Would you please turn in bundle VI to pages 1480 and  
23 1481. Will you confirm that that letter, dated 9 July  
24 2001, on Cathay Pacific notepaper, beginning, "Dear  
25 colleagues", and two pages of it -- signed by you,

1 Philip Chen?

2 A. Yes, correct.

3 Q. That was the statement you were referring to in your  
4 witness statement?

5 A. Yes.

6 Q. You went on to say:

7 "I honestly and genuinely believed that those who  
8 had been dismissed had been selected by the airline's  
9 review team on the basis of identifying those who the  
10 airline did not feel confident about as having the  
11 airline's best interests at heart."

12 Was that the truth?

13 A. That's the truth.

14 Q. Were you yourself personally involved in the review team  
15 decision as to who should or should not be terminated?

16 A. I was not.

17 MR HUGGINS: Thank you. Would you stay there, Mr Chen,  
18 because Mr Grossman will have some questions for you.

19 HIS LORDSHIP: Thank you.

20 Mr Grossman?

21 MR GROSSMAN: I just want to ask my learned friend  
22 something.

23 (Discussion off the record)

24 Cross-examination by MR GROSSMAN

25 Q. Mr Chen, just a few questions. In order to once again

1 make sure I don't deal with any matter that is not  
2 actually part of our complaint, I think it is probably  
3 simpler to go to the pleadings. If you would open,  
4 please, bundle I at page --

5 HIS LORDSHIP: Bundle I(A). Which page, Mr Grossman, would  
6 you like us to look at?

7 MR GROSSMAN: Would you look, please, at page 5. When you  
8 are ready, Mr Chen, look at page 5.

9 These are the matters about which we complain,  
10 except, of course, for where you have said that you're  
11 not sure about a particular matter this morning.  
12 I don't think it's denied that you said these things.

13 At subparagraph (8) -- do you see that?

14 A. Yes.

15 Q. Mr Philip Chen "stated about the dismissed aircrew that  
16 'we cannot allow this crew to disrupt the airline ...'"

17 Pause there. Was that your belief, that this group  
18 of 49 was disrupting the airline?

19 A. I think the individuals with their action would be  
20 disrupting the airline.

21 Q. But were you talking about a group together or were you  
22 talking about individuals?

23 A. I think a group of individuals.

24 Q. A group of individuals?

25 A. Yes.

1 Q. Was it your belief at the time that this group was  
2 a coherent group, a group that had got together to  
3 disrupt the airline?

4 A. I mean, the disruption happened at that time.

5 Q. What was your belief at the time? There were 49 people  
6 who got together to disrupt the procedures?

7 A. Well, I think there were individuals, a lot of  
8 individuals involved, yes.

9 Q. Yes, but was it your belief that there was some kind of  
10 coherent group that had got together, they were  
11 planning -- those 49 were planning to disrupt the  
12 operations of Cathay Pacific?

13 A. I think with the information we have got, definitely  
14 there was communication leading to these disruptions.

15 Q. Oh yes, but that was from Captain Demery. He's not one  
16 of the 49ers. Are you saying these 49 got together and  
17 said, "Let's do the utmost we can to disrupt" --

18 A. I don't think I said that here.

19 Q. But what do you mean by "this group were going to  
20 disrupt the airline"?

21 A. Well, the people who were actually disrupting the  
22 airline.

23 Q. I know, but are you says that they were acting together  
24 in concert, as it were, or just 49 happened not to --

25 A. I do not have a number here, and I think it's -- that's

1 what I am referring to. There are people --

2 HIS LORDSHIP: Mr Grossman's question is this, Mr Chen: are  
3 you saying there was some sort of conspiracy among these  
4 49 people to act as a group to disrupt the airline, or  
5 are you simply saying this group of persons individually  
6 were acting in a way which disrupted the operations of  
7 the airline?

8 A. I think my impression was there were efforts, not just  
9 individual initiatives, to disrupt the airline.

10 MR GROSSMAN: Sorry, I didn't hear the first part. I don't  
11 know if Mr Huggins did. I didn't hear the answer -- the  
12 first part of the answer to his Lordship.

13 HIS LORDSHIP: His impression was that it was not just  
14 individual initiatives, that there was actually a group,  
15 that is, concerted effort.

16 MR GROSSMAN: Where did you get this impression from?

17 A. There are obviously communication letters and whatnot  
18 that we have understood.

19 Q. Yes, that's how this conspiracy took part, but where did  
20 you get the impression from there was a kind of  
21 conspiracy among these 49?

22 A. I am not referring specifically to the 49 people.

23 Q. Well, you are, actually. You're talking about "this  
24 group", the group are the 49ers.

25 A. I am saying the group of people were disrupting the

1 airline.

2 Q. Yes, the 49ers, the ones who --

3 A. That includes the 49ers, yes.

4 Q. Where did you get the impression from that this group  
5 had some kind of conspiracy going between them?

6 A. Because there are disruptions and constant disruptions  
7 of the airline at that time, not happening in individual  
8 cases but there are general disruptions.

9 Q. So people based overseas, people in Hong Kong, were  
10 getting together and saying, "Let's see what we can do  
11 to disrupt the airline"?

12 A. Well, that is beyond me, but I mean --

13 Q. I am asking you, Mr Chen. What did you believe?

14 A. The consequence was that we had flight cancellations, we  
15 had flight delays, and obviously these happened at the  
16 same time, around that period.

17 Q. Yes. So that's the reason why you thought there was  
18 a conspiracy, I understand.

19 A. I didn't use the word "conspiracy" but I am saying, yes,  
20 there were a lot of disruptions of the airline, to the  
21 eye, at that time.

22 Q. I want to make sure -- I understood you to say, in  
23 answer to his Lordship, "Yes, I wouldn't use the word  
24 'conspiracy' but, yes, a group of them together were  
25 doing their best to disrupt the airline".

1 A. There are a group of people disrupting the airline, yes,  
2 I agree with that, yes.

3 Q. And they were acting together?

4 A. Well, it's a matter of how you put it, but yes, there  
5 are -- there is a group of people disrupting the  
6 airline, yes.

7 Q. Thank you. That was the impression you were trying to  
8 convey?

9 A. Yes.

10 Q. Thank you.

11 "We cannot allow this group to disrupt the airline,  
12 employees, our customers or the reputation of Hong Kong.  
13 Nor can we allow this group to let the much larger  
14 numbers of flight crews who are showing total  
15 professionalism we require -- suffer."

16 I want to ask you this: this is an extremely serious  
17 allegation to make, that these people weren't acting  
18 professionally, that these pilots were unprofessional.  
19 Do you adhere to what you said there, they weren't  
20 acting professionally?

21 A. I must honestly say, I do not actually remember making  
22 such a statement.

23 Q. All right. Would you now publicly then say, as Mr Tyler  
24 was good enough to do, "We do not make any allegation of  
25 unprofessionalism against these 49 people"?

1 A. I really do not think I would make allegations of  
2 unprofessionalism, and everything I said -- I mean,  
3 I would not deviate from carefully considered written  
4 scripts.

5 Q. But it very important for people to know, and for future  
6 employers to know, that there is no allegation by Cathay  
7 Pacific that they were unprofessional. Do you  
8 understand that, Mr Chen?

9 A. I listened to Mr Tyler and agreed with Mr Tyler that on  
10 the technical side we have definitely no questions about  
11 it.

12 Q. Thank you very much. On 9 July -- I will just carry on  
13 reading this page -- you said:

14 "The company and the Hong Kong community are unable  
15 to acquiesce to such tactics."

16 These are the tactics you have been talking about,  
17 Mr Chen.

18 "We cannot be held to ransom indefinitely ..."

19 Pause there. How were these 49 people holding you  
20 to ransom?

21 A. I do believe if the airline, other staff members and the  
22 travelling public, in fact the whole of Hong Kong, faces  
23 such disruptions and uncertainty, it is definitely not  
24 to the benefit of the airline. This is --

25 Q. But how were these 49 holding Cathay to ransom? What

1           were these 49 doing, or any of them, or all of them  
2           doing, that was holding Cathay to ransom?

3    A.   The disruptions.

4    Q.   Disruptions?

5    A.   Yes.  And the uncertainty looking to the future.

6    Q.   The disruptions in the context of contract compliance?

7    A.   The actions that have been taken, yes.

8    Q.   In the context of contract compliance?

9    A.   I think that's part of it, yes.

10   Q.   So you're satisfied, are you, that these 49 people were  
11       dismissed at least in part because of their  
12       participation in an industrial activity?

13   A.   No, I don't think so.

14   Q.   You don't think so?

15   A.   I don't think so.

16   Q.   Then how do you square that with your suggestion  
17       a moment ago that it was in part -- part of the reason  
18       was because they were involved in contract compliance,  
19       which was an industrial action?

20   A.   It is the behaviour and the -- well, the behaviour,  
21       basically, that has been considered, I think.

22   Q.   What behaviour?

23   A.   The attitude and the behaviour.

24   Q.   Mr Chen, were these people sacked -- dismissed, your  
25       words -- as a result of a participation in a union

1 activity or not?

2 A. I do not think so.

3 Q. You don't think so?

4 A. I don't think so.

5 Q. So the fact that they were engaged in what's been called  
6 contract compliance, and some of them in MSS, has  
7 absolutely nothing to do --

8 A. No, not entirely so, I should say.

9 Q. Not entirely ...?

10 A. Not entirely so.

11 Q. Perhaps you would like to explain. I'm told that people  
12 at the back can't hear. You will understand there is  
13 a lot of interest here. I wonder if you wouldn't mind  
14 speaking up.

15 A. Yes, I will.

16 Sorry, Mr Grossman, you were saying?

17 Q. You were about to say they were not dismissed entirely  
18 because of contract compliance. I think that's what you  
19 were going to say.

20 A. Yes.

21 Q. What do you mean?

22 A. I think the flight operations review team had a thorough  
23 review of all the employees and they looked at the  
24 attitude and the behaviour, and I think they have looked  
25 at everybody with full knowledge, full considerations.

1 Q. Speak up.

2 A. Yes. And I think there are many other factors they have  
3 taken into consideration.

4 Q. Other factors, but included in those factors was there  
5 the factor that they were taking part in the union  
6 activities, which you didn't agree with.

7 A. Well, in disruption, shall we say.

8 Q. Disruption. What you call disruptions, and they were  
9 saying is contract compliance.

10 A. I think it's really -- I mean, that's your  
11 interpretation, Mr Grossman.

12 Q. No, no, no. Yours. I'm asking you, Mr Chen.

13 A. Yes.

14 Q. They were taking part in contract compliance. Nobody  
15 said that they weren't. And you say that this has  
16 nothing to do with their dismissals, or not? I've lost  
17 track.

18 A. No. The termination basically is based on our  
19 confidence with the employees in question.

20 Q. I see. So it's not to do with their contract  
21 compliance?

22 A. It's not entirely, as I said.

23 Q. But partly?

24 A. Well, it's a behaviour, shall I say.

25 Q. Sorry, I must pin you down on this: was it partly to do

1 with contract compliance or not? You can say "yes",  
2 "no" or "I don't know".

3 A. It's whether they are disrupting the airline. That's  
4 the behaviour --

5 HIS LORDSHIP: That's not an answer to Mr Grossman's  
6 question, Mr Chen. The question is: was it partly due  
7 to contract compliance? My understanding of what you  
8 have just been saying is that the answer is "yes". Is  
9 my understanding right or wrong?

10 A. I think my point is --

11 HIS LORDSHIP: Sorry, is my understanding right or wrong?

12 A. Yes, my Lord.

13 HIS LORDSHIP: It's right?

14 A. (Witness nodded).

15 HIS LORDSHIP: Mr Grossman?

16 MR GROSSMAN: Thank you.

17 If you turn to page 6, at the top you will see you  
18 say:

19 "This has been a very painful decision and one that  
20 has not been entered into lightly. However, we are only  
21 prepared to take this airline forward with pilots who we  
22 believe will have the best interests of the company at  
23 heart."

24 Do you see that?

25 A. Yes.

1 Q. Mr Chen, does that mean you then had complete confidence  
2 in the other -- the rest of the other 1,500-odd pilots?

3 A. We always have confidence in our staff, except the fact  
4 when there are disruptions to the airline.

5 Q. Mr Chen, you didn't have confidence, you said, in 49 of  
6 them. Does this statement here mean that you then had  
7 confidence in the other 1,500-odd?

8 A. Yes.

9 Q. Notwithstanding the fact that they had been involved, or  
10 most of them had been involved in contract compliance  
11 one way or another?

12 A. Well, we have confidence, yes.

13 Q. I beg your pardon?

14 A. We have confidence taking the airline forward with the  
15 rest of the -- with --

16 Q. Notwithstanding that they had been involved in the same  
17 union activity that you were criticising the 49 for?

18 A. As I said before, I think this is really -- I mean,  
19 there are a whole host of considerations that we have  
20 undertaken, so what you just highlighted is just part of  
21 the consideration.

22 Q. Would you go, please, to bundle IX.

23 HIS LORDSHIP: Can we put away bundle I?

24 MR GROSSMAN: Yes, please. Turn, please, to page 2914.

25 A. Yes.

1 Q. Give me a moment, please.

2 MR HUGGINS: It's the same one we have been using, in  
3 a different place.

4 MR GROSSMAN: I'm sorry, we have been looking at this. You  
5 can put that away. I apologise.

6 HIS LORDSHIP: We don't need bundle IX?

7 MR GROSSMAN: No. I'm sorry.

8 HIS LORDSHIP: Which bundle do we want then?

9 MR HUGGINS: Bundle VI, page 1489.

10 MR GROSSMAN: It's all right, I'm not going to deal with  
11 that letter after all.

12 HIS LORDSHIP: Right. Where would you like us to go to now,  
13 which bundle?

14 MR GROSSMAN: I propose to allow Mr Chen to go. I'm not  
15 going to ask any more questions.

16 HIS LORDSHIP: You have concluded?

17 MR GROSSMAN: Yes.

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

19 MR HUGGINS: I have no re-examination. Thank you, my Lord.

20 HIS LORDSHIP: Mr Chen, thank you very much for coming.

21 Mr Huggins, we resume, I think, with Mr Rhodes; is  
22 that the case?

23 MR HUGGINS: We do, my Lord, yes.

24 HIS LORDSHIP: So we will take a break now, and then resume  
25 in 15 minutes, at 11.40, with the second half of

1 Mr Rhodes. After Mr Rhodes, what is the plan?

2 MR HUGGINS: Mr Sten Kroutil is the remaining witness, and  
3 that will be the end of the evidence for the defendants.

4 HIS LORDSHIP: And Mr Kroutil may or may not be finished  
5 today?

6 MR GROSSMAN: He will certainly be finished today.

7 HIS LORDSHIP: So that will leave only Mr van Keulen?

8 MR GROSSMAN: Yes.

9 HIS LORDSHIP: All right. We will resume at 11.40.

10 (11.25 am)

11 (A short adjournment)

12 (11.42 am)

13 HIS LORDSHIP: Mr Grossman.

14 MR NICHOLAS PETER RHODES (on former oath)

15 Cross-examination by MR GROSSMAN (continued)

16 MR GROSSMAN: Mr Rhodes, good morning.

17 A. Good morning.

18 Q. I just want to take you to a couple of things that we  
19 dealt with yesterday evening. First of all, you  
20 agreed -- tell me if you want to change it --

21 A. Okay.

22 Q. -- but this is what you agreed, that the 49 people were  
23 the ones who you thought were the most active  
24 participants in the contract compliance --

25 A. Can I change that?

1 Q. Pardon?

2 A. Can I clarify that?

3 HIS LORDSHIP: Perhaps if you just listen to the question  
4 first, and then I am sure you can clarify, whatever you  
5 want to clarify, but let's listen to the question first.

6 A. Okay. Thank you.

7 HIS LORDSHIP: It is said you agree that the 49 were the  
8 individuals most involved in the contract compliance  
9 campaign, and ...? And, Mr Grossman?

10 MR GROSSMAN: And also were uncooperative, unhelpful and had  
11 poor attendance.

12 A. I confirm the second part. I thought I made it quite  
13 clear I had no knowledge of whether the individuals had  
14 voted for contract compliance or were actively  
15 participating in contract compliance. All I could judge  
16 was their actions and their attitude.

17 The same as far as sickness. If a crew member was  
18 sick on a regular basis, I didn't know whether that was  
19 because he was participating in a sick-out or for some  
20 other reason, and if he was difficult with crew control  
21 I didn't know whether that was because he was  
22 participating in contract compliance or he was just  
23 difficult.

24 So I could only judge the actions. I didn't know  
25 whether those actions were as a result of the crew

1 member actively following the contract compliance  
2 guidelines.

3 Q. Well, I am just reading to you what you said.

4 A. And that was my recollection, but --

5 HIS LORDSHIP: This is the clarification, Mr Grossman.

6 MR GROSSMAN: Very well.

7 HIS LORDSHIP: I think what Mr Grossman is suggesting is  
8 this: you looked at attendance, you looked at sickness  
9 records and so on, because that was the best  
10 manifestation that you would have as to who was most  
11 involved in the contract compliance campaign. It's  
12 difficult to prove that some individual or other is  
13 involved in the contract compliance; he is just  
14 complying with his contract, on the face of it. But  
15 what you do is you pick the criteria that most likely --  
16 there's a large number of sicknesses, there's a lack of  
17 attendance -- because most likely that's how you are  
18 going to target those who are most involved in contract  
19 compliance. Was that the thinking?

20 A. Well, we weren't trying to target anybody because they  
21 were involved in contract compliance. We were just  
22 trying to address the issue of crew members either not  
23 turning up for work or not answering the phone or being  
24 particularly unhelpful with crew control.

25 As you say, that may have been a manifestation of

1 the contract compliance campaign, but we just lost  
2 patience with crew not showing up for work on a regular  
3 basis or just trying to disrupt the operation.

4 HIS LORDSHIP: Right. Mr Grossman?

5 MR GROSSMAN: Thank you.

6 Then let me make it clear: despite what you said  
7 yesterday -- I'm simply reading what you said -- the  
8 dismissals had nothing to do with the trade union  
9 activity?

10 A. I had no idea who was in the union and who wasn't and  
11 who had voted for what and who hadn't. I was only  
12 taking action based on the attitude and attendance of  
13 those individuals.

14 Q. Yes. You say that when you were making the decision  
15 whether to dismiss any one of the 49ers, it had nothing  
16 to do with his participation in the contract compliance  
17 scheme?

18 A. Not per se, no. I don't know whether he was  
19 participating in a contract compliance scheme. I could  
20 just see that he was being unhelpful or uncontactable or  
21 sick on a regular basis. So I don't know whether that  
22 was as a result of contract compliance or whether he had  
23 just withdrawn his enthusiasm.

24 Q. So contract compliance and the possibility of MSS had  
25 nothing whatsoever with these dismissals?

1 A. That was the trigger or the catalyst that caused us to  
2 conduct the review. As I was trying to explain  
3 yesterday, we'd lost patience with these crew members  
4 who we thought were trying to disrupt the operation by  
5 being unhelpful or not showing up for work, and I had  
6 been under pressure for a long time to take action and  
7 look at the employment of these individuals. The MSS  
8 vote, and the fact that we hadn't got the deal, was the  
9 catalyst to then conduct the review. So that was the  
10 trigger.

11 Q. I think you have been sitting in court this morning,  
12 hearing me reading out what Mr Tyler, Mr Chen and  
13 Captain Barley have said, and they all seem to link it  
14 one way or the other, that is the dismissals, with  
15 holding the company to ransom; in other words the union  
16 activity.

17 A. Certainly the union activity and the launch of MSS,  
18 which we were told was going to go for weeks, for  
19 months, for years, however long it took until we agreed  
20 to the union demands, was definitely the trigger, when  
21 the senior management, and I don't know whether that  
22 included Mr Chen and Mr Tyler, said, "Enough was enough,  
23 we're not going to carry these passengers and the  
24 workforce anymore"; that was one of the expressions.

25 Q. A little later on we will be coming to deal with some of

1           them and see how they fit into your categorisation of  
2           unhelpfulness.

3           But let me just ask you about one other thing about  
4           yesterday. I asked you if you accepted that there was  
5           a real concern amongst the crew about the rostering  
6           system: they thought they were flying too long, too  
7           hard, too often, on their days off.

8    A.   Sorry, is that a -- have I missed a question?

9    Q.   That's what I asked you yesterday, and you said, "This  
10       was something that the union was putting about"?

11   A.   Correct. I think I tried to say we had the data, so we  
12       knew exactly how many hours crew were flying, we knew  
13       exactly how many days they had off, we knew how many  
14       rosters were changed, and we didn't believe we had  
15       insufficient crew budgeted for the task.

16           I think I was explaining, on certain days and during  
17       certain periods where the sickness was way above normal  
18       and way above budget, it did leave us depleting reserves  
19       and having to disrupt the roster to keep the show on the  
20       road, and it often resulted in flights being cancelled  
21       or two flights combined into one.

22           So we were having problems, but I put it to you that  
23       that was because of the higher sickness than normal, not  
24       because of a shortage of crew.

25   Q.   Well, do you accept, and I will ask you again, that

1           rightly or wrongly -- you may disagree with it -- but  
2           the pilots were very concerned about the rostering  
3           system?

4    A.    I think all the pilots -- I think all pilots --  
5           honestly, my Lord, all pilots in all airlines around the  
6           world will always have concerns about the rostering  
7           system.  I don't think there is such a thing as  
8           a perfect rostering system.

9    HIS LORDSHIP:  Is that a "yes"?

10   A.    Well, I don't think we have --

11   HIS LORDSHIP:  Is that a way of avoiding the thrust of  
12           Mr Grossman's question?

13   A.    I just want to make sure that the answer covers the  
14           whole picture.

15   HIS LORDSHIP:  Sorry, what is the answer, first, "yes" or  
16           "no"?

17   A.    Pilots certainly had issues with the current Cathay  
18           Pacific rostering practices.  That was why we were in  
19           negotiations to try and change the way we rostered crew.

20   MR GROSSMAN:  I think you will accept, from what you have  
21           heard, that 92 per cent of them were in favour of some  
22           kind of limited industrial action, they were so  
23           concerned about the rostering system?

24   A.    I don't think that was purely because of the rosters,  
25           Mr Grossman.  The vote was to take industrial action to

1 address rosters and remuneration.

2 Q. Yes. Were you at that meeting? You weren't, were you?

3 A. No, but I was well aware of what was happening in the  
4 negotiations because I was on the company team talking  
5 about rosters and remuneration. There were two separate  
6 talks going on.

7 In the Labour Department, towards the end of June,  
8 Mr Demery had made it quite clear, they would not do  
9 a deal unless we addressed the remuneration side of the  
10 talks, the pay increases. He would accept we could put  
11 rosters to one side but he wouldn't do a deal the other  
12 way around, so I always felt pay was as important as  
13 rosters, if not more so, in those negotiations.

14 Q. Well, you have seen what Mr Demery was saying in all  
15 those letters yesterday.

16 A. Yes.

17 Q. I'm not going to go through all of them with you. But  
18 rostering seemed to have a very high profile in their  
19 concerns?

20 A. It certainly had a high profile. For some crew it was  
21 pay. For some crew it was rosters.

22 Q. All right.

23 Now I want to ask you about something else. When  
24 the decision was taken to dismiss 49 people, were the  
25 general committee or the negotiators specifically

1 targeted?

2 A. No.

3 Q. We will come to that later.

4 Now I would like you to look, please, in bundle III,  
5 at page 740. This is an affidavit you swore; do you see  
6 that?

7 A. Yes. On what date?

8 Q. It's dated 21 June 2007. You see that on page 741. Do  
9 you see that?

10 A. Yes, I do see that.

11 Q. If you go to paragraph 3, what that says is:

12 "By a letter dated 27th April 2007 from [the  
13 solicitors] to [my solicitors], the plaintiffs indicated  
14 an intention to apply for 'an order requiring the  
15 directors or executives of your company to make  
16 affidavits stating that [CPA and Veta] do not have the  
17 agenda and minutes or record of the review team  
18 meetings."

19 Do you see that?

20 A. I do see that.

21 Q. JSM replied. Then in paragraph 4:

22 "On behalf of the defendants, and as a member of the  
23 review team (in my then capacity as General Manager  
24 Aircrew), I confirm the defendants have never produced  
25 any documents such as agendas, circulars, memoranda,

1 notices, notes, minutes or a transcript for and/or  
2 during the review meetings."

3 Is that true?

4 A. That's true, correct.

5 Q. Is it? Well, I've heard what you said.

6 Then let's go to bundle VI, please -- let's not go  
7 there. We can save time.

8 Do you remember Mr Wilkinson then produced  
9 a document?

10 A. I remember Mr Wilkinson produced a list of the crew,  
11 yes.

12 Q. He did, which was handed out or dealt with at that  
13 meeting?

14 A. Yes. We had two lists of crew at the meeting, that list  
15 Mr Wilkinson produced and the seniority list.

16 Q. How does that gel with what you said in your affidavit,  
17 that there was nothing --

18 A. Well, we only had one agenda item for the meeting, which  
19 was to review every crew member in Cathay Pacific and  
20 look at their employment records, attendance, attitude,  
21 et cetera. That was the only agenda item. So there  
22 wasn't an agenda produced, a circular to announce the  
23 meeting. There were notices or memorandums. We just  
24 had a list of crew, two lists of crew, to review.

25 Q. Why didn't you say so? Why did you swear an affidavit

1           that said, "We didn't have any documents", to put it in  
2           a general sense?

3    A.   Well, I thought that the plaintiffs were looking for  
4           agendas, notes, circulars. I mean, a list of crew -- we  
5           have a list of crew.

6    Q.   Why didn't you say so?

7    A.   I didn't think it was -- it was irrelevant. I thought  
8           they were looking for notes from the meeting, minutes of  
9           the meeting, transcripts of the meeting, an agenda for  
10          the meeting. We didn't have any such documents.

11   Q.   I will read it to you again:

12                 "On behalf of the defendants, and as a member of the  
13                 review team ... I confirm the defendants have never  
14                 produced any documents such as agendas, circulars,  
15                 memoranda, notices, notes, minutes or a transcript ...",  
16                 et cetera.

17   A.   I -- we weren't trying to be evasive. We didn't produce  
18           documents such as agendas, notes, minutes and  
19           transcripts. There were no documents attached at the  
20           meeting. But we had to work through every crew member  
21           in Cathay Pacific. So we had various lists of crew.  
22           The only agenda item was to review whether they were  
23           working in our best interests. So we had lists of crew.

24   Q.   Mr Tyler, I think you will accept that this affidavit is  
25           not wholly correct, is it?

1 HIS LORDSHIP: It's Mr Rhodes, to begin with, and not  
2 Mr Tyler.

3 MR GROSSMAN: Sorry.

4 HIS LORDSHIP: He has explained how he understood what he  
5 stated, Mr Grossman. Do we need to take it much  
6 further?

7 I don't really know where this is going to get us,  
8 in any event. We've got the list of crew. You're  
9 saying that there are more documents that haven't been  
10 discovered? Fine, you can go ahead and make that point,  
11 but I don't think it will get us further one way or the  
12 other.

13 MR GROSSMAN: Yes. I am asking, were there any other --  
14 this is what I am going to ask anyway, eventually --  
15 I'll do it now.

16 Were there any other documents other than these crew  
17 lists?

18 A. To my knowledge, in that meeting we had crew lists in  
19 three different forms. We had that short list that  
20 Mr Wilkinson had in his possession, we had the seniority  
21 list of all crew members in the company, and we had  
22 a list of crew held digitally on a disk. So we had  
23 three different forms of crew lists, so we could check  
24 crew data, but there were no other -- no written  
25 documents in terms of minutes or transcripts.

1 Q. So when you came to ask various people, whose affidavits  
2 we have seen, "Tell us about Mr X or Mr Y or Mr Rogers  
3 or Mr Gage", for instance, nobody was relying on any  
4 notes?

5 A. We had the seniority list and we had the data held in  
6 that CD, the crew disk, which had all of their biodata,  
7 a photograph of them, attendance data, detailed rosters  
8 for the past 18 months, and we would bring personal  
9 files into the meeting if necessary.

10 Q. So the files were there, the personal files were there?

11 A. They would be brought in if required.

12 Q. What about people who said, "I remember Mr Rogers, he  
13 was rude to somebody some years ago", or something like  
14 that; were there no notes of that?

15 A. There wouldn't have been notes recording necessarily  
16 that event. If there was something in the personal  
17 file, when the personal file was brought in, we would  
18 have a look at a previous incident where there may have  
19 been a warning letter. But I'm not quite certain -- are  
20 you talking about notes prior to the meeting or notes  
21 recorded after the meeting as to what was said?

22 Q. Both. You see, you seem to have relied a lot on  
23 hearsay, gossip, rumour and the rest of it?

24 A. We relied on a lot of personal knowledge from the  
25 members of the review team who had been dealing with

1           these pilots, in some cases over 20 years, so there was  
2           intimate knowledge of some of the individuals there.

3    Q.   Did you not want to see some kind of documentation as to  
4           when there had been a complaint or anything like that?

5    A.   We could find documentation, if necessary.  If there was  
6           an issue with crew control recently that we still had  
7           the tape in possession, we could go and listen to that  
8           tape --

9    Q.   Did you do that?

10   A.   I can't recall.  The crew controllers brought their  
11           information into that meeting through Mr Leung, who had  
12           gone through with the senior crew controllers their  
13           understanding over many years of dealing first-hand with  
14           the pilots, who was particularly unhelpful or particular  
15           will you uncooperative, and they may have listened to  
16           some tapes to help them compile their evidence which  
17           they brought into the meeting.

18   Q.   There is no way we could check this, we just simply  
19           don't know?

20   A.   Mr Leung would have had that information.

21   Q.   His statement simply says "So and so told me this" and  
22           "So and so told me that".  We want to know where that  
23           came from.

24   A.   That would come from the crew controllers themselves.  
25           Their knowledge would have been built over many years of

1 dealing with these people, and they know the pilots who  
2 are particularly helpful, and they know the pilots who  
3 are particularly unhelpful extremely well.

4 Q. This is one of the problems we have here. There was  
5 nobody, I think, except for Mr Warham who had  
6 a complaint letter in 1995, when he was a member of the  
7 committee, who had anything in their personal files.

8 A. No, I --

9 Q. I'm talking about these 18, I don't know about the rest  
10 of them, I'm not interested --

11 A. No, I'm trying to say that the personal knowledge about  
12 the pilots in Cathay Pacific amongst the people in that  
13 room was very extensive. I mean, that's how you get to  
14 know whether an employee is helpful or unhelpful, by  
15 dealing with them for 20 years. You don't necessarily  
16 write it down every day, that "So and so was  
17 particularly unhelpful today", and "So and so didn't  
18 answer his phone", and "So and so shouted at me or made  
19 me cry today" -- they don't keep records of that, but  
20 they remember. I used to walk into crew control on  
21 a regular basis and see who had called in sick that day  
22 and see what had happened, and it was quite an emotive  
23 place.

24 Q. You see, this is one of the extraordinary things,  
25 Mr Rhodes. You ruined the lives of 49 people and their

1 families on the basis of hearsay, rumour, what other  
2 people have said --

3 A. No, I disagree.

4 Q. -- without anything written down.

5 A. It's not hearsay and rumour. It's extensive experience  
6 in dealing with these pilots very many years. It's not  
7 hearsay or rumour.

8 Q. We are going to be coming to that, I promise you, in  
9 a while, and we will see that what you have been saying  
10 is not correct.

11 But let me go back to what I was saying. You get  
12 rid of 49 people, you destroy their careers by getting  
13 rid of them, you destroy their families, they have to  
14 leave Hong Kong, most of them, and there's not a single  
15 piece of paper, or almost no pieces of paper, or  
16 anything that one can look objectively at and say, "Yes,  
17 we understand why it was done".

18 A. You can look objectively at the attendance records.

19 Q. The attendance records?

20 A. You can look very objectively at the attendance records.

21 Q. What do you mean?

22 A. How often a crew member called in sick, what the  
23 frequency of that would be. If an individual had called  
24 in sick 25 times in 30 months, that's on record. If  
25 they call sick for a very high percentage of reserve

1 duties, that's on record. If they call sick with  
2 an hour before signing on, that's on record. So we had  
3 a lot of detail of their attendance, and whether we felt  
4 they were not reporting for duty on a regular basis,  
5 that was on record.

6 Q. I just want to make sure I understand what you are  
7 saying: you are saying that these people who were off  
8 sick and didn't report for duty, they were malingering,  
9 they were lying about their sickness? Let's talk about  
10 the 49.

11 A. Yes, there was definitely --

12 Q. They were malingering, were they?

13 A. Definitely a belief that they were malingering.

14 Q. Let's talk about Mr Dickie. When did he malingering?

15 A. Mr Dickie, from memory -- and I may need to go to the  
16 bundle -- reported sick for duty over the 30 months  
17 prior to his dismissal, I believe, 20 times.

18 Q. Assuming that's right, on those occasions how many times  
19 was he lying about being sick?

20 A. It's impossible for me to say, it's just --

21 Q. Of course it's impossible for you to say. Perhaps he  
22 wasn't lying at all.

23 A. Perhaps not, but we can only go on probabilities here,  
24 and if you take any moment in Cathay Pacific, in a year  
25 in Cathay Pacific, a third of the pilots would not have

1 a single absence, sickness absence, and another third of  
2 the pilots would have one.

3 So at any particular time, if you took a 30-month  
4 period, the average pilot in Cathay would be calling in  
5 sick three or four times -- two, three or four times.  
6 So if a guy is calling in sick 20 or 25 times, there's  
7 a high probability that it's not all 100 per cent  
8 genuine.

9 His Lordship used various gradations, that maybe one  
10 day when you're not in contract compliance and you're  
11 sick-out and you're feeling a bit tired, or you have  
12 a snuffle, maybe you will go to work, but if there's  
13 a sick-out going on and a withdrawal of enthusiasm and  
14 you're feeling a bit tired, maybe you will say, "I'm not  
15 going to work to that day". No, that doesn't mean --  
16 it's just a gradation, as you say, whether he turns up  
17 to work on that day or not.

18 Q. Well, according to the allegation, in the 30 months  
19 preceding termination, he was absent on 20 occasions for  
20 41 days. That's the allegation against Mr Dickie, or  
21 one of them. There's no allegation against him that he  
22 called in sick on short notice or missing reserve duty.  
23 If you want to see it, or for your Lordship's records,  
24 it's on page 344.

25 So, that's what I want to know. In respect of any

1 one of these 18 people, in respect of any one of  
2 these 18 -- you pick them, any one you like -- where is  
3 there any allegation that he lied, that he malingered  
4 when he said he was sick?

5 A. I don't think I have made that allegation.

6 Q. You made it a few minutes ago.

7 A. I didn't make the allegation that he lied.

8 HIS LORDSHIP: I think what Mr Rhodes is saying is you  
9 simply went on the probabilities; is that right?

10 A. We went on the probabilities, and if somebody goes sick,  
11 we look at an average sickness record of a pilot in that  
12 review meeting, and if a guy had gone sick twice in  
13 a year and each time it was six or seven days, we  
14 wouldn't have taken it any further. He's probably had  
15 a cold one or two times. That's normal. But, if a guy  
16 goes sick 20 times, and 10 of them are just for one day,  
17 that would raise our concern. It's very unusual just to  
18 fall sick for one day; what illness do you get that  
19 makes you sick for 24 hours and suddenly you are better  
20 again? That was the type of pattern we were plotting.

21 HIS LORDSHIP: I understand your evidence on that,  
22 Mr Rhodes. One concern one might have is this: you are  
23 simply going by the probabilities, you say?

24 A. Well, most of the time we are going by probabilities,  
25 yes.

1 HIS LORDSHIP: If I understand the disciplinary and  
2 grievance procedures, one of the matters that is  
3 stressed there is that Cathay Pacific adheres to the  
4 principles of natural justice, in particular, I would  
5 imagine, giving the other side a chance to be heard.

6 A. Yes.

7 HIS LORDSHIP: Because there may be a perfectly legitimate  
8 explanation for, shall we say, abnormality and  
9 probability.

10 A. Yes.

11 HIS LORDSHIP: But from my understanding of the procedure  
12 that was taken, there was no chance given to any of the  
13 49 persons dismissed to explain or to account for any  
14 anomalies in their sickness records. My concern is, it  
15 doesn't seem like natural justice was followed.

16 A. I understand the concern, and my Lord, with respect to  
17 sickness, what the majority of pilots would do, if they  
18 had an illness, and they were going to be off work for  
19 some time, or they had an illness that kept  
20 re-occurring, was that they would pro-actively call the  
21 company. They would ring one of the personnel managers  
22 in flight operation and say, "I have a high level of  
23 sickness, this is my problem", they come in and talk  
24 about it with you, they are very open, they discuss,  
25 they let you talk about it with the company doctor and

1           they want to get back to work, they want to fix it.

2           The crew members that go into the absence management  
3 programme will get a letter once they have had --  
4 I can't remember at that time whether it was eight  
5 absences in a year or 10 absences in a year. Then they  
6 are sick again a number of times in the next six months.  
7 Then we send them a letter and invite them to come and  
8 explain, what is the problem, what is the issue, can we  
9 help, can we intervene, is this all genuine, and they  
10 will ignore, on many occasions, that offer to come and  
11 explain their situation, which struck us as them turning  
12 down that opportunity to explain, and it caused us to  
13 suspect that all the sickness perhaps wasn't genuine.

14 HIS LORDSHIP: Right. Mr Grossman.

15 MR GROSSMAN: Look, please, in bundle IX.

16 A. Can I put this one away?

17 Q. Yes, please, for the moment.

18 HIS LORDSHIP: Which page, Mr Grossman?

19 MR GROSSMAN: Page 2880. It actually starts at page 2879.

20 This was a meeting with various people at which you were  
21 present. Do you see that?

22 A. Sorry, we are on page 2879 or 2870?

23 Q. Page 2879 shows who was there.

24 A. Page 2879? Sorry.

25 Q. It was a meeting held on 8 May, do you see that?

1 A. Yes. That was the meeting held between the company and  
2 the AOA to discuss relatively -- well, discuss a range  
3 of issues.

4 Q. If you turn to page 2880, down the bottom at 3a) you see  
5 "Absence management programme"; do you see that?

6 A. Yes.

7 Q. I think this is what you've been talking about.

8 A. Correct.

9 Q. Let's read it through:

10 "The association stated that it saw the absence  
11 management programme turn from a humanitarian endeavour  
12 to a punitive policy. It also stated that if the  
13 programme is going to be used to coerce officers to come  
14 to work when they are sick, the association will not  
15 participate in it."

16 All right? You can read the rest of it. Then turn  
17 over to the next page, which is the response from the  
18 company. We will read that together:

19 "The company reviewed its objectives for the  
20 attendance policy. It is modelled on policies in place  
21 at other airlines. It is corrective, not punitive and  
22 it deals with non-culpable absences. If the company  
23 finds any employee abusing sick leave, it will deal with  
24 that individual through the D&G process."

25 Do you see that?

1 A. Yes.

2 Q. But not in regard to the 49ers, though? Mr Rhodes, you  
3 didn't go through that process with the 49ers, did you?

4 A. No.

5 Q. Why not?

6 A. We chose not to. We chose to terminate the 49ers  
7 through the clause that allows us to give them three  
8 months' notice.

9 Q. You had stated there, given an undertaking that you were  
10 going to deal with it on a disciplinary matter, and you  
11 didn't do it, not with a single one of them.

12 A. That's correct.

13 Q. So there's no possible way of knowing whether they were  
14 culpable or not.

15 A. But there's no possible way of identifying whether the  
16 employee was abusing sick leave, that's the problem.

17 Q. That's absolutely right.

18 A. Yes. If we knew for certain they were abusing sick  
19 leave, we would take them through the D&G. If we knew  
20 for one second that they were falsifying sickness, and  
21 they were not reporting for work, saying they were sick  
22 and they were perfectly fit, if we had proof of that  
23 then they would be disciplined and probably summarily  
24 dismissed without any payment.

25 Q. Come on, Mr Rhodes. You know what you are saying now;

1 "We didn't know, we weren't sure, so we sacked them"?

2 A. No, I disagree. If we have any evidence that people are  
3 abusing the sick leave, then we would have to go through  
4 the D&G and we would have to terminate them without pay.

5 Q. All right, Mr Rhodes. You sacked these people without  
6 having any evidence that they were malingering, that  
7 they were abusing it?

8 A. No. Just based on the probabilities. We couldn't  
9 definitely prove that they were falsifying sickness.

10 Q. Do you agree that's a disgraceful thing to do --

11 A. No, I don't --

12 Q. -- to sack people because they may have malingered --

13 A. I don't agree.

14 Q. -- without giving them an opportunity?

15 A. No, I don't agree. I think it's a disgraceful thing if  
16 you don't turn up for work when you are able to do so.

17 Q. Which of those 18 were able to do so when they didn't  
18 turn up? That's what I'd like to know.

19 A. Based on the probabilities. Well, we can run through  
20 each one in turn.

21 Q. We'll do that, if necessary, but I'd like you to tell  
22 us, which of those 18 specifically -- not on the  
23 probabilities -- which of those 18 did not turn up for  
24 work when he could have done?

25 A. Well, we believe a large number of them. Because before

1 the contract compliance, these pilots were turning up  
2 for work on a regular basis. Then we had this period,  
3 that after the industrial action was over in July 2001,  
4 sickness returned to normal levels.

5 Q. We will talk about that later, but what I want to ask  
6 you is this: was the company doctor at this review  
7 meeting?

8 A. I was in regular discussions with the company doctor --

9 Q. Was he at the review meeting?

10 A. -- but he wasn't at that review meeting, no.

11 Q. Did anybody say to him, "Which of these people is  
12 malingering"?

13 A. Yes, I asked him.

14 Q. And he told you, did he?

15 A. He says it's very difficult if a crew member comes to  
16 see him and says he has a bad back, he has no way of  
17 knowing. If a crew member says he is feeling a bit  
18 tired today, he has no way of knowing. So he suspected  
19 they were malingering, but he had no way of knowing.

20 Q. That was one of the main bases on which you threw people  
21 out of your company?

22 A. That was the basis for the sick-out, because the company  
23 doesn't have any way of knowing. That's why it was used  
24 against the company.

25 Q. You mention the sick-out. I will come back to it later

1 on, but I just want to ask you this. Just so there's no  
2 misunderstanding, and I'm sorry if I repeat the  
3 question: there's no proof, to use your words, of any  
4 single one of these 18 pilots who I represent having  
5 deliberately lied about being sick on a day when they  
6 said they were.

7 A. You can't deliver absolute proof, that's why they used  
8 the tactic.

9 Q. That's why, what?

10 A. That's why the sickness tactic was used.

11 Q. Which of these 18 used that sickness tactic?

12 A. We believe a great number of them.

13 Q. Which ones? Specifically, tell me. I want to know the  
14 names.

15 A. I would need to look at some of the data, that chart, to  
16 see the numbers.

17 Q. I will show that to you later, and I want you to tell me  
18 specifically, once you have looked at it, which ones of  
19 them lied. Will you be able to do that?

20 A. I haven't used the word "lied" --

21 Q. Yes, you have.

22 A. -- I have used the word "malingering".

23 Q. That is exactly the same thing. You are saying they  
24 said they were sick. They lied about being sick when  
25 they weren't.

1 A. I was trying to say it was a very grey area. There were  
2 times if there wasn't contract compliance in place,  
3 I think they would have turned up for work. With  
4 contract compliance and sick-out in place, they used it  
5 as an opportunity not to turn up for work.

6 Q. You don't know, did you?

7 A. Of course we don't know.

8 Q. But you sacked them without knowing.

9 A. Of course you don't know.

10 Q. I want to ask you about something I started to ask  
11 Mr Tyler about, but he said it was possibly not him.  
12 Are you the right person to ask about the benefits  
13 included in the wage package?

14 A. I was at the time. I will try and recall.

15 Q. All right. If you can't, just tell me. In addition to  
16 their salary, was a rental allowance included?

17 A. The rental allowance is included for what we call  
18 expatriate officers in Hong Kong. If you're on a base  
19 overseas, such as the last three plaintiffs, they  
20 wouldn't have any housing support. If you are a locally  
21 employed pilot in Hong Kong through the cadet scheme,  
22 you have no housing support. So it's the expatriate  
23 pilots in Hong Kong.

24 Q. All right. An annual bonus?

25 A. Annual bonus, we call it a 13th month, and the

1 13th month is paid only to crew in Hong Kong, all crew  
2 in Hong Kong, subject to satisfactory company  
3 performance. It's not paid to the crew on the bases.

4 Q. In the last eight years, has there been any period when  
5 they haven't been paid a 13th month?

6 A. Yes.

7 Q. When was that?

8 A. They certainly wouldn't have been paid a 13th month last  
9 year.

10 Q. Last year?

11 A. I'm trying to think what other years we didn't make  
12 money. There would have been other periods when they  
13 weren't paid. Sometimes it's reduced and not a full  
14 month is paid. Sometimes it's not paid at all and  
15 there's an ex gratia payment instead, but it's not paid  
16 every year.

17 Q. Overtime pay, I think it's also called excess flying  
18 pay.

19 A. Excess flying pay. We do have an excess flying pay  
20 system, yes, an overtime system.

21 Q. That's to do with extra productive hours, is that --

22 A. In those days, the pilots had an annual threshold.  
23 Going back, 1999, 2000, there was an annual threshold  
24 and they could fly 700 hours a year and beyond that they  
25 could either refuse to do any more work or they could

1 get overtime. They had an option. Then current  
2 rostering practices that we have in place, we have  
3 a monthly threshold of 84 hours a month, and if they go  
4 beyond that they get overtime.

5 Q. Is that called credit hours?

6 A. They get 84 credit hours now. They get credit for  
7 things other than flying.

8 Q. Duty pay?

9 A. Hourly duty pay is a variable pay. As it says, they get  
10 paid, for every hour that they are operating, a little  
11 bit on top of salary. It adds another 5 or 10 per cent  
12 of salary, and that came in, I think, 2001, but I'm  
13 guessing.

14 Q. Outport allowance?

15 A. They get a reimbursement allowance of their expenses  
16 when they are in an outport for breakfast, lunch and  
17 dinner, a little bit of laundry money and taxi fare, and  
18 some beer money, I think.

19 Q. Profit sharing?

20 A. Profit sharing is a policy, it's not a contractual  
21 benefit, but it's a policy that applies to all Cathay  
22 staff in the event of certain formulas triggered, and  
23 that hasn't been triggered too often recently.

24 Q. Has it been triggered since 2001?

25 A. I'd have to check.

1 Q. All right. Education allowance?

2 A. Children's educational allowance, similar to housing or  
3 same as housing, is only for expatriate officers in  
4 Hong Kong, and obviously only if you have children.

5 Q. Travel allowances?

6 A. I'm not certain what that means, the travel allowance.

7 Q. You see what I have listed and you can tell me --

8 A. We used to have a leave passage allowance for crew who  
9 joined the company before 1993, and they were given cash  
10 each year to buy a ticket to go home, but that stopped  
11 for any pilot who joined after 1993.

12 Q. Do they get any annual travel allowance?

13 A. That's what I'm referring to, but that doesn't apply to  
14 pilots who have joined in the last 16 years.

15 Q. Annual free tickets?

16 A. They get tickets, yes.

17 Q. Concessionary tickets?

18 A. You can apply for concessionary tickets on other  
19 airlines, yes.

20 Q. That's called an ID90?

21 A. Yes, 10 per cent of a fare and you stand by.

22 Q. I see. Cargo rebate?

23 A. I think similar.

24 Q. Repatriation travel?

25 A. If you are an expatriate in Hong Kong and you leave

1 Hong Kong to go back to your home country to take up  
2 a base or to retire, you will get a ticket to position  
3 home and some space in a container.

4 Q. Retirement concessionary travel?

5 A. With some restrictions on how long you've worked for the  
6 company and what age you are, yes.

7 Q. Medical coverage?

8 A. Medical coverage you get, whether you are in Hong Kong  
9 or on a base, different type of package.

10 Q. Provident fund?

11 A. Provident fund, we pay 15 and a half per cent of salary  
12 to pilots who joined since 1993.

13 Q. What about overnight allowance? Is that different  
14 from --

15 A. That's the same as the outport allowance, I believe.

16 Q. Roughly, I'm not asking you to do it exactly, can you  
17 give his Lordship some idea of the percentage  
18 relationship between the basic salary and the benefits?

19 A. Very hard to do that roughly. If you are a pilot that's  
20 come from overseas, from Australia to work in Hong Kong,  
21 you won't get state schooling, you have to put your kids  
22 into schooling, so they would say that's neutral.

23 "We rent a property here", they haven't bought their  
24 own, so some may say the housing is the cost of the  
25 company doing business. Others will buy a property here

1 and we will help them with some mortgage relief and they  
2 may say that's a benefit because they are gaining some  
3 value.

4 So it's almost impossible to say how much the  
5 benefit package is worth as a percentage of the total  
6 package, because it will mean different things for  
7 different pilots. Certainly on the bases, they get  
8 their salary, plus the provident fund and a bit of  
9 medical but not much more.

10 So it's very hard to answer that question and give a  
11 general figure in percentage terms, but the expatriate  
12 package obviously means the pilots can make Hong Kong  
13 their home.

14 Q. Are you in a position, say, to give us any kind of idea,  
15 for an expatriate, say a married expatriate with  
16 a couple of children --

17 A. I wouldn't like to guess a figure, no.

18 Q. All right, I won't push you on that. Let me ask you  
19 something else. Probably the simplest thing is to go to  
20 the last statement which you made, which is in bundle X.  
21 I'm not going to go through all of it, you will be happy  
22 to know, but just certain paragraphs I want to deal  
23 with.

24 Paragraph 29, go to that --

25 A. What page are we on?

1 Q. Page 11. We have dealt with this to some extent, but  
2 I need really to deal with it in the context of your  
3 statement:

4 "... over the four-year period from mid-1997 to  
5 mid-2001, CPA witnessed an increasing trend of a general  
6 withdrawal of enthusiasm from a number of crew members."

7 Is that right?

8 A. That's correct.

9 Q. Which of the 18 do you include in that?

10 A. I don't know.

11 Q. You don't know?

12 A. I mean, they were included from mid -- all of them would  
13 be included at some point between 1997 and 2000 to have  
14 had a general withdrawal of enthusiasm, but I don't know  
15 at what point that would have started for each of them.

16 Q. But for each of those 18 you noticed a general  
17 withdrawal of enthusiasm?

18 A. Yes, I think that's a fair statement.

19 Q. All right. Are you able to show us any single document  
20 that indicates that? We haven't seen it.

21 A. The attendance records.

22 Q. That's what you're talking about, the attendance  
23 records?

24 A. Yes. Well, the attendance records and the reports from  
25 crew control.

1 Q. The attendance records of when they may or may not have  
2 been sick? They said they were sick but they may or may  
3 not have been?

4 A. The attendance records, when they either gave us a sick  
5 note or they didn't, the reports from crew control, and  
6 from the personnel management that dealt with these  
7 pilots, and also some of their chief pilots. There was  
8 a change in behaviour from a number of the individuals  
9 during this period. That's what I meant by that  
10 statement.

11 Q. I see. You see, we have looked through all these  
12 documents and are unable to find any suggestion anywhere  
13 of a general withdrawal of enthusiasm in relation to any  
14 of these 18. But now I understand you to say that's to  
15 do with that they may or may not have been sick when  
16 they said they were.

17 A. Partly that, but also their attitude to crew control.  
18 Crew control were noticing -- they are at the front  
19 line, the crew controllers, so they are the ones who  
20 witnessed this change of behaviour and this withdrawal  
21 of enthusiasm and this rather confrontational approach,  
22 and they do keep tapes of those conversations, as  
23 I think we've said, for six months to a year.

24 I remember an occasion with one of the plaintiffs  
25 when we had to have a disciplinary and grievance

1 procedure and we pulled the tape and sat down and played  
2 the tape in front of him.

3 Q. Was that one of these 18?

4 A. Yes.

5 Q. Who was that?

6 A. That was Mr Gage.

7 Q. The chairman of the Sunnyside Club?

8 A. The chairman of the Sunnyside Club. He had raised his  
9 voice and acted in what I considered an inappropriate  
10 manner with one of the crew controllers, who was reduced  
11 to tears, and I had to bring him in and say, "This isn't  
12 an appropriate way to speak to a fellow colleague". We  
13 played the tape and conducted a disciplinary hearing.  
14 We don't keep the tapes permanently.

15 Q. What was the result of that disciplinary hearing?

16 A. I think he had a warning.

17 Q. And he was sacked because of that?

18 A. No, no. That was just part of the picture. That  
19 behaviour, as far as the crew controllers were  
20 concerned, continued right up until the middle of 2001.  
21 It didn't change.

22 Q. Let me make sure: Mr Gage was given a warning, and that  
23 should have been the end of it?

24 A. Well, that was a verbal warning. That was the end of  
25 that specific incident.

1 Q. All right. What other incidents with Mr Gage?

2 A. There were many, many other cases where crew control  
3 reported his behaviour as being inappropriate.

4 Q. Where's the documentation? There's nothing, absolutely  
5 nothing.

6 A. We did keep the tapes, each and every one.

7 Q. We've looked at his personal file; nothing?

8 A. Correct. It's a report from crew control, and every  
9 single one of the ten crew controllers who were asked  
10 listed Mr Gage. It wasn't one crew controller.

11 Q. Did they?

12 A. Every single one of ten had him right in the top five of  
13 their list.

14 Q. And not a single one had put anything in writing?

15 A. No.

16 Q. Don't you find that extraordinary?

17 A. No, not at all.

18 Q. A company like Cathay Pacific, that keeps, no doubt, the  
19 most meticulous records about everything?

20 A. Well, we keep the tapes.

21 Q. Did you listen to any of these tapes?

22 A. Yes.

23 Q. Just the one we have been talking about?

24 A. No. I listened to them all.

25 Q. All of them?

1 A. Yes.

2 Q. And when you made your decision to fire Mr Gage, was  
3 that on the basis of tapes you had listened to?

4 A. It was based on a combination of things. It was  
5 an absence record, I think again 20 absences in  
6 30 months, and a very damning report from crew control.

7 Q. You didn't take into account what he had been doing on  
8 behalf of Cathay Pacific?

9 A. No, I didn't take that into account whosoever.

10 Q. Why not?

11 A. I was only focusing on his performance as a pilot and  
12 the duty to turn up for work and be cooperative and  
13 civil with the rest of his colleagues. That was all  
14 I was looking at.

15 Q. The fact that he was giving so much of his free time to  
16 Cathay Pacific was not something that weighed upon you?

17 A. It didn't weigh heavily upon me.

18 Q. It didn't weigh at all upon you?

19 A. We discussed it but that wasn't --

20 Q. Did you?

21 A. We did.

22 Q. We haven't seen that in anybody's statement.

23 A. No.

24 Q. All right.

25 Now, in paragraph 30 -- read to yourself. I don't

1 want you to read it out.

2 A. Yes.

3 Q. Which of the 18 kept on saying, "I'll do my best"?

4 A. I'd have to ask Mr Leung and the crew controllers.

5 Q. You don't know?

6 A. No. The information regarding their attitude to crew  
7 control and the ones that said "I'll do my best" on  
8 a regular basis, that information would have been held  
9 by the crew controllers.

10 Q. "Held" in what sense? In their head?

11 A. In their head, over years and years of dealing with  
12 them.

13 They know these people extremely well. They deal  
14 with them every day. The crew controllers know these  
15 pilots intimately. They know who's going to help; they  
16 know who's not going to help. This is the front line of  
17 Cathay Pacific. They are extremely experienced people  
18 and they know -- when they look at a roster and they  
19 know who's on duty that day, they will guess who's not  
20 going to turn up for work.

21 Q. Now, further down in paragraph 30, you are talking about  
22 people who were off-duty, et cetera. This meant, you  
23 see, four lines from the bottom:

24 "This meant that the officer would be uncontactable  
25 at all times other than at work or on a reserve duty."

1 Do you see that?

2 A. Yes.

3 Q. Which of the 18 are you talking about?

4 A. Again, I would have to ask the crew controllers.

5 I would think the majority of them, based on my  
6 recollection of the discussions in the meeting, but I'd  
7 have to check with the crew control.

8 Q. You have heard some of the people saying, "I was always  
9 on duty, I was always contactable". You have heard them  
10 say that. Are there any of them who said they were  
11 lying?

12 A. I can't recall exactly which of the individuals crew  
13 control said were uncontactable. The majority of them  
14 would have been uncontactable most of the time.

15 Q. The majority of the 18?

16 A. Yes. That was my recollection of the discussion at the  
17 meeting.

18 Q. Then a little -- then next:

19 "There were also periods during which large number  
20 of aircrew members were absent from work. CPA believes  
21 such high numbers of absences were as a result of  
22 a campaign of orchestrated sickness initiated by the  
23 HKAOA."

24 Which of these people, of these 18, took part in  
25 that orchestrated sickness?

1 A. I looked at a chart the other day where we had some  
2 spikes --

3 Q. Well, we haven't seen those, so you carry on. Just tell  
4 me which of those 18 --

5 A. No, there was a graph that we looked at the other day.

6 HIS LORDSHIP: Page 397.

7 A. There were some days there, five or six days, where  
8 I was showing that the sickness had shot up off the  
9 chart.

10 MR GROSSMAN: Which of these 18, Mr Rhodes?

11 A. I would have to go and check those dates and look, but  
12 that was something that was discussed in the meeting.

13 Q. You don't know which of the 18?

14 A. We did at the time of the meeting, because we looked at  
15 the spikes, when we thought they were orchestrated sick  
16 days, where they were getting the target of sick crew up  
17 to about 90 or so on that day, and as part of looking at  
18 the absence we looked at whether the crew were absent on  
19 those spikes, on those days.

20 Q. I see.

21 A. So we did analyse that.

22 Q. We don't have those figures. We don't know that. We've  
23 got nothing to show that.

24 A. No, no. But it was discussed in the meeting and that  
25 was part of the decision-making.

1 Q. Now, in paragraph 31 you say:

2 "Supplementing the above from my 1st statement,  
3 I would add that the 'I'll do my best' response to crew  
4 control's requests and the use of second phone lines",  
5 et cetera -- I'm not going to read the whole thing --  
6 "were tactics actively promoted by the HKAOA as part of  
7 its so-called 'contract compliance' campaign. The  
8 resolution passed by the [union] instituting the  
9 contract compliance campaign was reproduced in  
10 [a newsletter]", which you attach.

11 If I may say so, most of your complaints seem to be  
12 about the union, not about these 49ers or these  
13 18 people who are left. It's a kind of general  
14 complaint about the union; isn't that right?

15 A. No. Well, we had complaints about the union during this  
16 whole period. We felt that the union was stirring up  
17 their membership to act inappropriately. But all we  
18 could do in terms of deciding who to terminate was to  
19 look at which crew members were acting in  
20 an inappropriate manner.

21 Q. What about Mr Demery? He was the one writing all these  
22 letters. He wasn't terminated.

23 A. Correct.

24 Q. I'm not saying he should have been.

25 A. Correct.

1 Q. I'm just saying I find it odd --

2 A. We evaluated him in exactly the same manner, and his  
3 sickness record was okay. He turned up for work.

4 Q. Right. Then in paragraph 32 you talk about the  
5 sick-out, and you told us you can't identify which of  
6 the 18 were deliberately malingering.

7 A. You're taking me to --

8 Q. Paragraph 32. Here you identify the sick-out, do you  
9 see that, in the third line?

10 A. Yes.

11 Q. But you can't tell us which of the 18 were deliberately  
12 pretending to be sick when they weren't? Anyway, we  
13 have dealt with that.

14 A. We dealt with that, I think. We did discuss that and we  
15 did try to identify as best we could who was  
16 participating in the sickness campaign in general and  
17 the sickness spikes specifically.

18 Q. You never asked any of them or suggested to any of them  
19 that they weren't telling the truth when they said they  
20 were sick?

21 A. We did when we asked them to come in and respond to the  
22 absence letters.

23 Q. No, no. When you dismissed them, you never said to them  
24 or asked any of them, "Look, have you really been sick?"

25 A. Not at the time of dismissal, no, but prior to that we

1 would have tried to contact many of them.

2 Q. All right. Now look at paragraph 34. Here you talk  
3 about the sick-out. This seems to be based on a letter  
4 from somebody who is not a witness here, so I don't know  
5 what his explanation is, but he says -- where we have  
6 looked at it is page 157 of this bundle. This is the  
7 one we are now very familiar with.

8 A. Yes.

9 Q. Somebody says:

10 "So we now know the target to aim for."

11 A. Yes.

12 Q. If you turn to page 171, it's a letter to Captain Barley  
13 from the union, signed by Mr Demery. This deals with  
14 the concern that was expressed about this email that you  
15 received.

16 In the fourth paragraph it says, "As previously  
17 stated ..."

18 Do you see that?

19 A. Yes.

20 Q. "... you have taken the comment, 'So now we know the  
21 target to aim for' out of context. It is clear from  
22 reading these words in their proper context that the  
23 comment is not serious. Therefore, I do not accept that  
24 there is any evidence that the association is attempting  
25 to disrupt the commercial operation of the company."

1 Do you see that?

2 A. I do see that.

3 Q. So we've got two people who haven't given evidence. One  
4 says, you say, "I received it, it was serious, I took it  
5 seriously", and the other one says, "No, it wasn't  
6 serious". Perhaps it wasn't serious.

7 A. I think it's very serious, and that was why Mr Demery  
8 was trying to distance himself from those comments.

9 Q. How do you know?

10 A. I rang Mr Findlay when I received this email.

11 Q. I see. Well, Mr Findlay hasn't given evidence.

12 A. No, but he was very embarrassed I had received it.

13 Q. Of course he was, because there is something stupid  
14 stated in this letter.

15 A. It was quite serious, I felt. I think Mr Findlay was  
16 well aware of how serious this was. This to me points  
17 to evidence that some of the sickness is not genuine.

18 Q. Mr Findlay hasn't given evidence. We haven't the  
19 faintest idea what he had in mind.

20 Turn to page 14 of your statement, where you deal  
21 with the maximum safety strategy:

22 "Adding to what I said in my 1st statement on this  
23 matter, I would characterise the MSS as a shift in  
24 tactics by the HKAOA from encouraging crew members to  
25 call in sick to encouraging its members to take

1 excessive amounts of time in preparing for departure."

2 Just pause there. When you say "excessive", these  
3 were amounts of time stated in their contract?

4 A. Sorry, where are we reading?

5 Q. Paragraph 40. Am I going too quickly?

6 A. Sorry, I just momentarily lost it.

7 Q. Just read the first sentence in paragraph 40.

8 A. The first sentence I have read, yes.

9 Q. Then it says:

10 "The resulting delays in flight departure times  
11 would have caused massive disruption to the CPA  
12 schedule."

13 A. Correct.

14 Q. Do you see that?

15 A. Correct.

16 Q. You know that the union were at pains to say, "This is  
17 going to cause minimum, absolute minimum, and we are  
18 doing it incrementally", et cetera. You disagreed with  
19 that?

20 A. Absolutely. They may have painted it in that way, but  
21 they were trying to delay flights 15 minutes to  
22 60 minutes. If you read between the lines of the MSS  
23 document, it was encouraging crew to take more time than  
24 they would normally do to complete the task.

25 Q. And what's the relevance to the dismissal of these

1 people?

2 A. This was just the trigger for us to review the  
3 performance and behaviour up until that point.

4 Q. What do you mean by "trigger"? You have used this  
5 before.

6 A. Well, a loss of patience. That was just the last straw.  
7 We had been tolerating and putting up with the  
8 attendance problems and attitude problems and withdrawal  
9 of enthusiasm for a long period. When talks broke down  
10 and we saw what was going to happen for the next  
11 months/weeks/years, however long, this was the trigger  
12 for my seniors to say, "Enough is enough; I don't want  
13 to employ any longer the crew who have been working  
14 against our interests up until this point".

15 Q. You say they were specifically working against your  
16 interests?

17 A. We felt they had been working against our interests up  
18 until that point.

19 Q. I see, deliberately sabotaging the operations?

20 A. Delaying flights, disrupting flights, causing flights to  
21 be cancelled.

22 Q. I see. A very serious allegation?

23 A. Yes.

24 Q. Why didn't you go through the D&G procedures? Why  
25 didn't you go through the disciplinary procedures, if

1           they were sabotaging your operations?

2    A.   They felt that by using sickness, which as we have  
3       discussed is very hard to prove, it would be difficult  
4       in a D&G to bring evidence, to sit down.

5           We run the D&G with witnesses.  The D&G tends to be  
6       a procedure we use for a specific incident.  If we have  
7       a crew member who has been in an altercation in a hotel  
8       or there's been an accusation by a member of the cabin  
9       crew for some inappropriate behaviour or what have you,  
10      we will sit down and say to the crew member there is  
11      a case it answer.  It could be a flying incident and we  
12      will bring witnesses, we will listen to evidence, and we  
13      will try to see whether the crew member was guilty of  
14      a misdemeanour, and then we can either terminate, with  
15      summarily dismissal, give a warning letter, give three  
16      months' notice.  We use the disciplinary and grievance  
17      procedure up until that point for a specific incident.

18           We tend to look at the clause 45.3, that either  
19      party may give three months' notice -- if a crew member  
20      has lost interest in his employment, he is showing a lot  
21      of malaise, he seems to have lost interest, he can give  
22      us three months' notice and leave, and we feel we could  
23      give the crew member three months' notice and ask him to  
24      leave.  We felt this general attendance attitude problem  
25      was more suited to, "We are going to give you three

1 months' notice and just part company".

2 Q. All 49 people at the same time?

3 A. Correct.

4 Q. So you had a situation here where any one of these 49  
5 may or may not have been lying about his sickness, and  
6 nevertheless they were sacked together, and the world at  
7 large and the aviation world in particular was told, "We  
8 cannot rely on these 49 people, they are holding  
9 Hong Kong to ransom"? That's rubbish, isn't it?

10 A. No. We genuinely felt they were trying to disrupt the  
11 airline and they were working against the best interests  
12 of the company. We didn't think they had the best  
13 interests of the company at heart in the period leading  
14 up to that time, and we felt that was the time,  
15 therefore, to part company.

16 Q. You know, it's not simply a question of, well,  
17 withdrawal of interest or malaise. These people were  
18 sabotaging your operations.

19 A. Correct.

20 Q. Causing you to lose millions.

21 A. Correct.

22 Q. Don't you think that's a disciplinary matter?

23 A. Well, the way they were doing that was going sick. It's  
24 very --

25 Q. Just answer the question. Was it a disciplinary matter,

1 to sabotage Cathay Pacific's operations?

2 A. If we had proof or we felt we could bring evidence, we  
3 would have levelled a charge for a disciplinary hearing.

4 Q. Leaving aside the question whether you had proof, do you  
5 agree with me that to sabotage Cathay Pacific's  
6 operations, to participate in causing millions of  
7 dollars of loss, is something that comes within the  
8 disciplinary procedures?

9 A. Not if they are using sickness as a weapon. We felt  
10 that we should just give three months' notice and use  
11 that clause.

12 Q. So you really didn't know if they were doing anything  
13 wrong; you thought, "Let's just get rid of them anyway"?

14 A. No, we were pretty convinced they were doing something  
15 wrong. Based on that email from Mr Findlay and based on  
16 the sickness records, we felt they were doing something  
17 wrong.

18 Q. The email from Mr Findlay didn't mention these 18, did  
19 he?

20 A. No. It just talked about trying to target a high level  
21 of sickness.

22 Q. Mr Rhodes, don't you understand the situation here? You  
23 are ruining the lives, realistically, of 49 families  
24 here. You're throwing them out of work, you're throwing  
25 them out of Hong Kong, you are reducing them to

1 unemployed and probably unemployable, on the basis of  
2 something that might have happened, that maybe they were  
3 sick, maybe they weren't sick?

4 A. No. I don't see it like that at all. We had been very  
5 patient for a very long period of time.

6 Q. No, no, no. I don't care if you are patient or not.  
7 You don't know whether or not they had done anything  
8 wrong?

9 A. That was why we chose 49, not 149. We only chose these  
10 crew because we were absolutely convinced they were  
11 working against our best interests.

12 Q. You thought "maybe"; that's all you thought?

13 A. We were pretty convinced. We wouldn't have chosen these  
14 crew unless the 20 people in that room had a consensus  
15 that they were deliberately working against our best  
16 interests, by either calling sick on reserve, calling  
17 sick at the last minute, having a high frequency of  
18 sickness, or just being very difficult to deal with.

19 Q. Do you accept that acting against the interests of the  
20 company is a disciplinary matter?

21 A. In some cases, but not through sickness.

22 Q. Not through sickness?

23 A. Because of the ability to prove, as we have discussed.

24 Q. Leave aside ability to prove.

25 HIS LORDSHIP: I think we have gone through this a number of

1 times with Mr Rhodes, Mr Grossman.

2 MR GROSSMAN: Very well. Thank you, my Lord.

3 HIS LORDSHIP: I can read the rules. I can decide whether  
4 it's a disciplinary matter or not, within the terms of  
5 the contract.

6 MR GROSSMAN: Yes. Thank you, my Lord.

7 Go to page 16, if you would, paragraph 46:

8 "In the first stage of the review, we identified  
9 among the aircrew ... officers who:

10 (i) had an attendance problem ..."

11 Just pause there. Here you mean the sickness  
12 problem, that maybe they were malingering, maybe not?

13 A. Correct.

14 Q. "... (ii) [they] had had a warning letter on file in  
15 respect of previous disciplinary action; and/or

16 (iii) were considered by the crew control  
17 representatives to be unhelpful and uncooperative ...",  
18 et cetera.

19 All right?

20 A. Correct.

21 Q. Let's just look at one or two. Can we look, say, first  
22 of all, at Mr Rogers. Do you remember him?

23 A. I do. I don't know him. I had never met him before.

24 The first time I saw him was in this courtroom.

25 Q. The allegations against him -- we can look in bundle I

1 at page 35. He is the 22nd plaintiff, and you see him  
2 under subparagraph (18). Do you see that?

3 A. Mm-hmm.

4 Q. "(i) in the 30 months preceding the date of termination  
5 of employment, he was absent from work on 12 occasions  
6 for 79 days; and

7 (ii) he was abusive to Manager Flying (Airbus) and  
8 subsequently apologised."

9 Do you see that?

10 A. I do see that.

11 Q. There's no allegation of being uncooperative or anything  
12 like that?

13 A. No, we didn't make that -- we didn't accuse him of being  
14 uncooperative.

15 Q. So there may have been --

16 A. Not from crew control, sorry. We didn't accuse him of  
17 being uncooperative by crew control.

18 Q. Well, these are the allegations against him?

19 A. Correct.

20 Q. "In the 30 months preceding the date of termination of  
21 employment, he was absent from work on 12 occasions for  
22 79 days".

23 Do you see that?

24 A. Yes.

25 Q. Did you think he was malingering then?

1 A. There was a suspicion, yes.

2 Q. Let's just go back further on that page. You see "the  
3 18th plaintiff". Do you see paragraph (i)?

4 A. Yes.

5 Q. "(i) in the 30 months preceding the date of termination  
6 of employment, he was absent from work on 26  
7 occasions ..."

8 A. Yes.

9 HIS LORDSHIP: Perhaps we can just identify for Mr Rhodes  
10 who the 18th plaintiff is.

11 MR GROSSMAN: That's Mr Shaw.

12 A. Thank you.

13 Q. "(ii) he had a tendency to be sick for reserve duties;  
14 (iii) he had a tendency to report sick on short  
15 notice".

16 Those are not allegations made against Mr Rogers?

17 A. No.

18 Q. So why did you think that on these 12 occasions, for  
19 79 days, he may have been malingering?

20 A. I'm just trying to recall what was discussed in the  
21 meeting. His name was put forward by the personnel  
22 manager responsible for him. Mr Davies put his name  
23 forward, I recall that.

24 We have a system in the company whereby you can take  
25 a temporary base outside of Hong Kong and go and --

1 Q. Let's stick to the sickness for the moment.

2 A. I'm explaining the sickness.

3 Q. Oh, I beg your pardon. Carry on.

4 A. We have a system where you are allowed to go on  
5 a temporary base, and we have very little reserve cover  
6 on bases so we are always concerned about absence on  
7 bases.

8 My recollection, from listening to Mr Davies'  
9 discussion, and crew control, was that Mr Rogers had  
10 a temporary base for a short period in Auckland and he  
11 called in unfit for work while he was there. He had  
12 a temporary base for one month in Rome and called in  
13 sick while he was in Rome, which caused some disruption  
14 to that flight. Then he went on a permanent base in  
15 Toronto and called in sick twice while he was in  
16 Toronto, once which caused a problem to the flight.

17 So --

18 Q. On which occasions was he lying?

19 A. We don't know.

20 Q. It may be that he was telling the truth?

21 A. It's possible. It's probability.

22 Q. Why is there nothing there, as there is in regard to  
23 Mr Shaw, that he had a tendency to be sick for reserve  
24 duties or report sick on short notice? That's what I'd  
25 like to know.

1 A. Well, he obviously didn't fall into those two  
2 categories.

3 Q. All right. So let's stick with Mr Rogers then. You  
4 don't know; he may or may not have been lying.

5 Then on one occasion he was abusive to somebody?

6 A. Correct.

7 Q. You dismissed him for that?

8 A. No, not solely for that. There were a number of  
9 managers in the room --

10 Q. No, no, no. This is the allegation against him.

11 I don't want any other hearsay or rumour. This is the  
12 allegation against him.

13 A. Well, it's a combination of (i) and (ii) then.

14 Q. That was the reason why his career was destroyed,  
15 because he may possibly have been lying on one or two  
16 occasions, or maybe more than that, that he was sick,  
17 and because on one occasion he had been abusive to  
18 somebody and apologised?

19 A. And the evidence of some other managers in the room.

20 Q. No, no, no. No other matters. This is the allegation  
21 against him, here. That's the allegation.

22 A. That was the summary, yes.

23 Q. I think you would agree with me, these are appalling  
24 reasons to dismiss somebody?

25 A. I think, if he had gone sick when he was fit to work on

1 one of those bases and delayed the flight, that wouldn't  
2 be --

3 Q. But you don't know?

4 A. We don't know.

5 Q. So do you agree with me: he should never have been  
6 dismissed?

7 A. We don't know whether he was deliberately trying to  
8 leave a flight on the ground.

9 Q. "So let's sack him anyway, just in case"? That's what  
10 it amounts to.

11 A. Those are your words.

12 Q. No, no. Those are your words.

13 A. No. I --

14 Q. "We don't know; let's sack him anyway"?

15 A. We didn't know any -- we didn't know whether Mr Shaw was  
16 sick on 26 occasions.

17 Q. Of course, "But let's sack him anyway because perhaps he  
18 was"?

19 A. We don't believe that was all genuine.

20 Q. You don't know. We just don't know.

21 A. Can we mention one incident with Mr Shaw?

22 Q. I beg your pardon?

23 A. I am happy to talk about Mr Shaw if --

24 Q. If you want to, yes. Tell me about Mr Shaw.

25 A. You were asking for a specific incident. I do recall

1           one specific incident -- I was looking in a bundle,  
2           I don't know whether it is in one of these bundles --  
3           when he was on duty for reserve, 6 April 2001. He was  
4           on duty for reserve at 07:00 in the morning, which means  
5           he should answer his telephone, and crew control  
6           couldn't find him and he wouldn't answer his telephone.

7    Q.   Is that in his personal --

8    A.   I saw it in a bundle, yes.

9    Q.   Is it in his personal file?

10   A.   It's in one of the bundles that I was reading.

11   Q.   Not in his personal file?

12   A.   It was on a crew control log.

13   Q.   Not in his personal file?

14   A.   Probably not.

15   Q.   So nobody thought it was serious enough to warrant going  
16        on his personal file?

17   A.   It's in a crew control record. That's what I'm  
18        referring to. But at 07:42, when they did contact him  
19        and asked him to do a duty, he then said he was sick.

20   Q.   And was he?

21   A.   I don't know. If he was sick for a duty, he should have  
22        told us before 07:00.

23   Q.   If what he had done was wrong, it should have been on  
24        his personal file, should it not, so you could  
25        discipline him?

1 A. If we had decided to conduct a disciplinary proceedings,  
2 it would have ended up on his personal file.

3 Q. Even without that, why was -- if he had done something  
4 wrong, which was seriously wrong --

5 A. Sometimes the manager will just have a word with him and  
6 we won't record it on the file.

7 Q. You see, forgive me, this is one of the things I'm not  
8 understanding here. You're getting rid of people for  
9 reasons which are not even serious enough to put in  
10 their personal file. That's what I find so difficult.

11 A. Well, the attendance records are kept but they don't go  
12 on the personal file. We keep a record of attendances  
13 in the flight system.

14 Q. Of course you do. I'm talking of culpable wrongful  
15 behaviour by individuals. You are getting rid of them  
16 notwithstanding the fact that it was not in their  
17 personal file; they hadn't done anything to warrant  
18 a note in the personal file. Am I right?

19 A. We don't put everything on the personal file, you are  
20 correct.

21 Q. Sorry, I'm not going to let you get away with that,  
22 Mr Rhodes. None of these people, except one or two you  
23 have mentioned -- Mr Rogers and Mr Shaw, for instance --  
24 they had done nothing serious enough to warrant a note  
25 from somebody in their personal file, and yet, on the

1 basis of these recalled incidents, they were sacked?

2 A. On the basis of the statistical attendance records, yes.

3 Q. Which may have been justified?

4 A. Which were kept.

5 Q. Which may have been justified?

6 A. Which may have been justified.

7 Q. Would you look, please, at paragraph 55 on page 18.

8 A. Which bundle?

9 Q. In your statement. It's bundle X.

10 HIS LORDSHIP: You can put away bundle I.

11 MR GROSSMAN: Yes.

12 You say here, in paragraph 55 -- do you have that?

13 It's the last paragraph on the page.

14 A. I have it, yes.

15 Q. "An officer's attendance and disciplinary record is  
16 merely an objective assessment of his employment  
17 history. As the heading of this criterion shows, the  
18 review team also considered the element of an officer's  
19 apparent attitude towards his work and his  
20 colleagues ..."

21 Then we get this phrase, which is not, I can tell  
22 you, in your first statement:

23 "... looking objectively at how that attitude was  
24 perceived by others in the airline."

25 What does that mean, the last part of that sentence,

1 the last phrase?

2 A. I think that just applies to any employee in any  
3 company. Management will have a perception that's built  
4 up over many years about whether that's an employee that  
5 can be relied upon, whether that employee has a positive  
6 attitude to his work or he doesn't. That's how he's  
7 perceived by management in the airline.

8 Q. So if there were people, for instance, who had scores to  
9 settle -- they were fed up with each other, they had  
10 a personal problem with somebody -- that would be  
11 something that would be taken into account?

12 A. No. There wasn't one individual in that review meeting  
13 who may have had a personal opinion who would be allowed  
14 to dominate the proceedings.

15 Q. How do you know they didn't have a personal opinion?  
16 How do you know they hadn't had an argument with  
17 somebody?

18 A. They may well have done, and they would have made that  
19 clear at the time, but --

20 Q. How do you know?

21 A. How do I know whether they had --

22 Q. How do you know they would make it clear that it was  
23 just a personal animosity towards an individual?

24 A. The way the review panel was run was to make sure that  
25 we had a general consensus of opinion amongst all 20

1           there before anyone was terminated. So it couldn't be  
2           one guy in the room that said, "I don't like this guy,  
3           his flying is not up to scratch". We would say, "No,  
4           this is purely about attitude and attendance and whether  
5           this crew member is working against the company's best  
6           interests. It doesn't matter whether his flying is  
7           a bit scratchy at the moment; we will fix that in his  
8           next proficiency check or his line check. This just  
9           about attitude and attendance".

10                   So if a guy said, "I had a run-in with this bloke  
11           about something", then that's not taken into account in  
12           deciding whether we are going to ...

13   Q.   Let's go back to Mr Rogers. The only thing, apart from  
14           the fact that he may or may not have been sick, he had  
15           a run-in with somebody and then apologised, so why  
16           should everybody in the room say, "No, no, no, let's get  
17           rid of him"?

18   A.   Everyone in the room was just looking at the records of  
19           the attendance and the sickness, right at the end of  
20           a basing period, and what happened to the flight when he  
21           was calling in sick. It was really on the attendance  
22           record that we assessed Mr Rogers.

23   Q.   Just on the attendance record?

24   A.   That was the primary evidence.

25   Q.   And he may or may not have been genuinely sick?

1 HIS LORDSHIP: I think we have been through that,  
2 Mr Grossman.

3 MR GROSSMAN: Yes. Thank you.

4 Look at paragraph 56 on page 19. I want you to look  
5 at the sentence starting in the middle of the page:

6 "In some cases there may have been a record of  
7 a particular incident of an officer's poor attitude in  
8 his personal file (for instance, where a complaint was  
9 filed against that officer), but in most cases, it was  
10 an officer's reputation among his colleagues,  
11 particularly the staff in the crew control section of  
12 CPA, that was being considered."

13 Is that right?

14 A. Correct.

15 Q. Do you regard that as a responsible way in which to  
16 dispose of people's careers?

17 A. I think the experience of the crew control in dealing  
18 with these pilots was very influential. They are the  
19 ones who know which crew members are saying, "I'm going  
20 to do my best, I can't tell you when I'm going to leave  
21 the airport, I can't tell you what time I'm going to  
22 report for duty". The crew controllers build up  
23 a knowledge of which crew are helpful and which crew are  
24 unhelpful, over years of dealing with them. I think to  
25 draw on that experience is very important in trying to

1 establish which crew are trying to get to the airport  
2 and get a flight off on time and which crew refused to  
3 co-operate or refused to help; argue when you assign  
4 them a task, argue when you change their roster, or  
5 challenge everything that you do.

6 The crew controllers really played a big part in  
7 deciding which crew member was uncooperative.

8 Q. How about Mr Rogers?

9 A. Mr Rogers was not in that category. He was on  
10 attendance.

11 Q. Just let me make sure that I've got it right: Mr Rogers,  
12 and perhaps some others, were dismissed because of  
13 a general feeling amongst -- sorry, not Mr Rogers but  
14 some of the others were dismissed because of a general  
15 feeling that they were uncooperative, they were  
16 difficult?

17 A. It would be on specific experience of either the crew  
18 controllers and possibly some of the personnel managers  
19 as well, but primarily the crew control experience.

20 It was the crew controllers who were taking the  
21 brunt of the contract compliance campaign. That's why  
22 they would understand who --

23 HIS LORDSHIP: I understand your point, Mr Rhodes.

24 Again, the concern, I think, of Mr Grossman is this.

25 You have a crew controller saying, "This is a difficult

1 person, I remember such and such an incident, specific  
2 incident". Normally fairness would at least require  
3 that you listen to the other side, if you are going to  
4 look at it objectively, and give the pilot concerned  
5 a chance to explain, if there is explanation, about the  
6 specific incidents referred to by the crew controller,  
7 just to give the pilot some opportunity to explain his  
8 side. That wasn't done.

9 Mr Grossman is saying, on that basis, can you really  
10 say that it was a fair process, it was a rigorous review  
11 procedure? I think that's what Mr Grossman is  
12 questioning.

13 A. Yes, sir.

14 HIS LORDSHIP: What do you say to that, Mr Rhodes?

15 A. As I've said before, we could have chosen to level  
16 a disciplinary charge against the individuals --

17 HIS LORDSHIP: I understand that point, Mr Rhodes, but that  
18 sounds possibly even worse, Mr Grossman would say,  
19 because what you're saying is, "Well, we can't prove it,  
20 we don't really have any rigorous or even any real proof  
21 about this, so we'll just get around the difficulty of  
22 the disciplinary and grievance procedure by giving three  
23 months' notice".

24 A. Well, that, as I've tried to explain, is the entire  
25 reason why the union and why many pilots felt that

1           having the sick-out and having contract compliance was  
2           the perfect weapon to put pressure on the company,  
3           because the company can't prove anything in  
4           a disciplinary hearing.

5   HIS LORDSHIP: This was your response to that perfect  
6           weapon?

7   A. Well, the only response we have is to monitor their  
8           behaviour and hope we would get a deal around the table,  
9           and then the behaviour would all disappear overnight --

10   HIS LORDSHIP: But this dismissal of the 49 was your  
11           response to the difficulties of proof raised by the  
12           perfect weapon indulged in, engaged in, by the union?

13   A. Well, we often talked about the different weapons that  
14           the union and the company held. The union knew they  
15           could pressure on us through sickness, they knew they  
16           could put pressure on us through contract compliance,  
17           they knew they could put even more pressure on us  
18           through MSS and delaying flights, and they felt that the  
19           company couldn't do anything about it.

20           We always said we feel, if a crew member has  
21           withdrawn his enthusiasm, has stopped working in the  
22           company's best interests, we can give three months'  
23           notice. That was our belief. We always said it  
24           shouldn't come to that; we've got to reach an agreement,  
25           we've got to almost put these weapons down.

1 HIS LORDSHIP: I can understand that. That was your  
2 evidence --

3 A. That's what we felt -- yes, exactly.

4 HIS LORDSHIP: Mr Grossman?

5 MR GROSSMAN: If you think it might be a suitable time --

6 HIS LORDSHIP: How much longer will you be with Mr Rhodes,  
7 Mr Grossman?

8 MR GROSSMAN: Perhaps half an hour or so.

9 HIS LORDSHIP: About half an hour.

10 MR GROSSMAN: "Or so".

11 HIS LORDSHIP: Yes, half an hour or so. Mr Huggins?

12 MR HUGGINS: No re-examination so far, my Lord.

13 HIS LORDSHIP: No re-examination so far. So we can move on  
14 to Mr Kroutil.

15 Does your estimate still hold good with Mr Kroutil,  
16 that you are likely to finish him this evening?

17 MR GROSSMAN: Yes.

18 HIS LORDSHIP: Because I can sit a little longer if  
19 necessary this evening, so we can go as long as is  
20 necessary, I hope not too much beyond 5.00 -- and we  
21 will have appropriate rest for the transcript writers,  
22 if necessary -- so that we can finish Mr Kroutil, so he  
23 doesn't have to be bothered about coming tomorrow.

24 MR HUGGINS: Your Lordship is kind.

25 I am sure your Lordship has already taken account of

1 the poor shorthand writers. I can see how quickly  
2 Mr Rhodes speaks and how dexterous they must be to catch  
3 up. Your Lordship has already taken account of that.  
4 I am very grateful. I am sure we will finish tonight  
5 comfortably.

6 HIS LORDSHIP: Thank you very much. We will resume at 2.30.

7 Mr Rhodes, you are still giving evidence, so you  
8 still may not discuss the case with anyone during the  
9 adjournment. Thank you.

10 (1.03 pm)

11 (The luncheon adjournment)

12 (2.30 pm)

13 HIS LORDSHIP: Mr Grossman?

14 MR GROSSMAN: Mr Rhodes, would you get bundle X again,  
15 please. Looking at your statement, go to page 23,  
16 please. At paragraph 72, the first part of it is  
17 I think what you've been saying, but let's look at it:

18 "I would add that, although MSS was the trigger for  
19 the review, whether an individual was participating in  
20 the MSS or not was not a factor we took into account and  
21 was certainly not part of the reason for terminating the  
22 plaintiffs' employment."

23 I think this is what you've been saying, isn't it?

24 A. Correct.

25 Q. Then go forward to paragraph 113 on page 32. Here you

1 are dealing with the allegation of defamation,  
2 statements made by Mr Chen and Mr Tyler. You say this:

3 "Insofar as they have been admitted, the statements  
4 complained of were made by Mr Chen and Mr Tyler to CPA's  
5 employees and the public at large against the background  
6 of the industrial action I have referred to above. It  
7 was the view of management that such industrial action  
8 and threatened industrial action were being orchestrated  
9 and were designed to delay flights or cause flights to  
10 be cancelled, generating uncertainty, inconvenience and  
11 anxiety for the travelling public and CPA's other  
12 employees. In effect, the travelling public was being  
13 made to suffer in order to strengthen the bargaining  
14 position of the [union] at the negotiating table. In  
15 making the statements complained of [Cathay Pacific] was  
16 reassuring the travelling public and its other employees  
17 that it was taking resolute action to prevent disruption  
18 and threatened disruption by pilots."

19 I wonder how you reconcile that with your statement  
20 that the union activities had no part in the decision?

21 A. I think the statements Mr Chen has made to the employees  
22 and Mr Tyler made to the media on that day were  
23 referring in general to the limited industrial action  
24 and the threats by the leadership of the AOA, and what  
25 those industrial campaigns were designed to do or

1           orchestrated to do: to delay flights, cause flights to  
2           be cancelled, cause bookings to be lost, generate  
3           uncertainty. They were referring in general terms to  
4           the campaigns that were going on.

5       Q.   And nothing to do with the sacking of these 49?

6       A.   What I'm referring to is: this latest campaign was the  
7           trigger then to go and review the individual employment  
8           records of all the pilots and decide who had been, if  
9           you like, disrupting flights up until that point.

10      Q.   You see, what I don't understand is how, given what you  
11           said in paragraph 113, it can be stated by you, how you  
12           can say, that the dismissal of these 49 people -- the  
13           action that was taken, in other words -- had nothing to  
14           do with the industrial action?

15      A.   Nothing to do with the threat of MSS and further limited  
16           industrial action for the next weeks/months/years ahead.  
17           That was just, as I say, the final straw, the trigger,  
18           the catalyst, to say, "Enough is enough, we are going to  
19           review the records of all the pilots", and look at who's  
20           been, in effect, disrupting the operations up until that  
21           point. It wasn't participation in the go-slow or the  
22           safety campaign that was the reason for those pilots  
23           being terminated.

24      Q.   All right. I hear what you say. His Lordship will  
25           decide eventually whether that is correct.

1 But you say here, in the last part of paragraph 113:

2 "In making the statements" --

3 A. Yes.

4 Q. -- "complained of CPA was reassuring the travelling  
5 public and its other employees that it was taking  
6 resolute action to prevent disruption and threatened  
7 disruption by pilots."

8 Now, those pilots, you are talking about the 49?

9 A. I think that's talking about pilots in general.

10 Q. In general? Well, that's what the position was, wasn't  
11 it?

12 A. Well, it's talking about pilots in general, and the  
13 49ers would have been included in there. We were trying  
14 to take action so that the pilots who had been  
15 disrupting the flights up until that point were no  
16 longer employed. I guess the assumption is, if there  
17 had been MSS, or the industrial action had continued to  
18 try and disrupt our operations, those pilots who had  
19 been disrupting operations up until that point would  
20 have been likely to have continued to disrupt operations  
21 in the years ahead, so maybe, by taking this action, it  
22 would reduce the level of disruption to the travelling  
23 public.

24 Q. Well, yes. This is what this case is about, isn't it?

25 What you decided to do was, because there was threatened

1 industrial action, to get rid of a whole lot of people,  
2 shoot the hostages, as it were, to encourage the others  
3 not to participate?

4 HIS LORDSHIP: I think you can make that submission,  
5 Mr Grossman.

6 MR GROSSMAN: Very well.

7 HIS LORDSHIP: You have effectively put the point.

8 MR GROSSMAN: Very well.

9 Just let me ask you this: if you had discovered  
10 during the course of your review that any of those 49  
11 were actually against the industrial action, would that  
12 have changed your view?

13 A. I don't know how we would be able to establish whether  
14 they were either for or against the industrial action in  
15 the review.

16 Q. Did you ask them? You see, Mr Carver has told us he was  
17 against it; he voted against it.

18 A. Well, I have no interest whatever in whether they voted  
19 for it or against it. We were only looking at their  
20 attendance and their attitude. Mr Carver, when we  
21 reviewed his attendance record and his reputation with  
22 crew control, we considered he was not working in our  
23 best interests for that period. So it wasn't a factor,  
24 whether he voted for it or not. I've never had that  
25 information to hand. I didn't even know which of these

1 pilots were members of the union.

2 Q. Were you not interested in who might participate in  
3 industrial action?

4 A. Not at all. I'm not interested in whether they voted  
5 one way or another, whether they said they supported the  
6 union or not. I'm only interested in what they actually  
7 did to the company.

8 Q. All right. I will ask you one last point, one last  
9 thing. You heard me ask Mr Tyler this morning about his  
10 press statement that remained on the Cathay website  
11 until a couple of weeks ago. Were you aware that it was  
12 on the website, until a couple of weeks ago?

13 A. I wasn't aware, but when I checked and I spoke to our PR  
14 department, every single press release we make remains  
15 archived in the depths of the Cathay Pacific website,  
16 but you would have to dig extremely deep to go and find  
17 it or trace it. It's not easily accessible and it's not  
18 re-released. They're just archived somewhere in the  
19 Cathay site, every press release we issue.

20 Q. Why was this one removed two weeks ago? Why was it  
21 removed?

22 A. We reviewed, based on some of the concerns we had, that  
23 we really should go back and look at some of the older  
24 press releases and start to update the archives.

25 I mean, I wasn't aware that they were there.

1 Q. Do you accept it was wrong to keep this press statement  
2 on the Cathay Pacific website for eight years?

3 A. If it was an easily accessible page in our website,  
4 I would accept that was wrong. But it was buried deep  
5 in an archive. You would really have to have known how  
6 to have found it and dug deep for it.

7 Q. Well, it was either accessible or not; that's why,  
8 presumably, it was erased?

9 A. I don't believe it was wrong to leave it deep in the  
10 archives. I don't accept that that was an issue.

11 MR GROSSMAN: Thank you, Mr Rhodes.

12 HIS LORDSHIP: Mr Huggins?

13 MR HUGGINS: No re-examination. Thank you, my Lord.

14 HIS LORDSHIP: Thank you very much, Mr Rhodes, for giving  
15 evidence yesterday and today.

16 Mr Huggins?

17 MR HUGGINS: Mr Sten Kroutil, please.

18 HIS LORDSHIP: The correct pronunciation is Kroutil,  
19 Mr Huggins?

20 MR HUGGINS: Kroutil, my Lord, yes.

21 HIS LORDSHIP: Then I mispronounced it this morning.

22 MR HUGGINS: My Lord, I didn't even attempt to pronounce how  
23 Z-D-E-N-E-K is said. I call him Sten Kroutil and  
24 I think everybody else does too.

25 HIS LORDSHIP: Skip the first name then, Mr Huggins.

1 MR ZDENEK KROUTIL (sworn)

2 Examination-in-chief by MR HUGGINS

3 MR HUGGINS: Mr Kroutil, can I ask you, as I did other  
4 witnesses from Cathay, to speak up, because everyone is  
5 entitled to hear what you say.

6 A. I'll do my best.

7 Q. Please go to bundle X, where we will find your witness  
8 statement. Turn to page 38, where you will find the  
9 beginning of it, and it goes through to page 45. At  
10 page 45 there's the date, 17 September 2009. Is that  
11 your signature?

12 A. Yes, it is.

13 Q. Will you please confirm to this court that the contents  
14 of that statement are yours and that they are true and  
15 honest answers to the issues that you have been asked to  
16 speak about?

17 A. Yes.

18 Q. You are content for these to be accepted as part of your  
19 evidence in this trial?

20 A. I am.

21 Q. There are just two small matters I would like to ask you  
22 to top up, as we lawyers say, which have been raised,  
23 one by my learned friend Mr Grossman only a couple of  
24 minutes ago, which you may be able to help about.

25 Very recently, was it drawn to the attention of the

1 solicitors for Cathay, who then drew your attention to  
2 it, that the plaintiffs had said, "Look, some of these  
3 statements are still on the website"? Was that drawn to  
4 your attention?

5 A. Yes, it was.

6 Q. Can you just remember roughly how recently that was?

7 A. It would have been within the last 30 days.

8 Q. When that happened, what did you do about it? Did you  
9 try to check yourself whether it was still on the  
10 website?

11 A. Yes, I did.

12 Q. Could you just tell his Lordship how easy or difficult  
13 it was to retrieve these from the website and how one  
14 went about it?

15 A. You had to put in specific words to retrieve that.  
16 I believe I had to put the -- the words that got me  
17 there were "termination in 2001".

18 Q. If you had put in "John Simpson Warham", would it come  
19 up?

20 A. It did not.

21 Q. If you put in "Richard Gage" or any of the named  
22 plaintiffs in this case, would that have come up?

23 A. No. There were no names in it.

24 HIS LORDSHIP: When you say "put in", did you put it in  
25 a search function, that says "search" and then you put

1 in whatever words you want to search for on the website?

2 A. Yes, my Lord.

3 HIS LORDSHIP: This website is accessible to the public, the  
4 general public? You don't need any special password  
5 or --

6 A. It's the CathayPacific.com website, accessible to the  
7 public.

8 HIS LORDSHIP: Including that archived area?

9 A. Yes.

10 MR HUGGINS: And, that having been drawn to the attention of  
11 your solicitors, you having checked it yourself, were  
12 they then removed?

13 A. Yes, they were.

14 HIS LORDSHIP: Just one more question. I'm sorry,  
15 Mr Huggins.

16 MR HUGGINS: Of course, my Lord.

17 HIS LORDSHIP: You say you had to type in words like  
18 "termination in 2001". If you had typed in "John  
19 Simpson Warham", for instance, that won't come up. If  
20 you had typed in words that happen to be in the article,  
21 in the statement, the statement would come up?

22 I'm not sure that Mr Warham's name, for instance, is  
23 actually specifically mentioned in the statement so, not  
24 surprisingly, it may not come up. But if you type in  
25 words that are in the statement, presumably the

1 statement would come up?

2 A. I believe that would be the case.

3 MR HUGGINS: So, of course, if you had the statement and you  
4 knew what words were in the statement, and you then  
5 typed it in, then as his Lordship said --

6 HIS LORDSHIP: That's a leading question, Mr Huggins.

7 MR HUGGINS: My Lord, I'm so sorry. I will leave it anyway.

8 HIS LORDSHIP: You can assume the court is quite familiar  
9 with the use of the internet and websites.

10 MR HUGGINS: My Lord, I am sorry to have taken up the time.

11 There is only one other matter before I sit down.

12 Mr Kroutil, an issue was raised about the  
13 newsletters and information, announcements coming from  
14 the union. We have seen quite a lot in bundle X, and  
15 you have sitting in court all the time, about that.

16 Can you help us as to the state of the records  
17 within Cathay about such documents? When did you arrive  
18 in Cathay?

19 A. I joined in February 2001.

20 Q. Can you tell his Lordship, are you familiar with the  
21 Cathay records of such documents?

22 A. Yes, I am.

23 Q. Can you just tell his Lordship how it is that we have,  
24 in a bundle produced by Cathay, the 2000 onwards quite  
25 extensive coverage, but less accessibility in relation

1 to the earlier parts, the earlier campaign?

2 A. When I joined, I believe out of courtesy the HKAOA  
3 office would forward to me a copy of, I can't say all  
4 such updates but certainly most of them, and in any  
5 event different pilots, including at least one of our  
6 chief pilots, were members of the union. If we were  
7 missing a particular update or Between the Leaf, as they  
8 were called at that time, we certainly were able to get  
9 a copy.

10 Q. Again, it's a small peripheral matter, but perhaps you  
11 could just help us: during the course of this trial --  
12 my Lord, this is leading, but it's not in any way in  
13 dispute, I know -- it was observed that there was  
14 a document dated 1998, referring to contract compliance  
15 prior to the July 2000 resolution, and at that point did  
16 you go back to Cathay to see what documentation, if any,  
17 we could assist the court with in relation to the  
18 earlier contract compliance?

19 A. Yes. We searched our records, but certainly prior to my  
20 arrival in February 2001, I don't believe our records  
21 were as complete as since then.

22 MR HUGGINS: Thank you very much. Mr Grossman may have some  
23 questions.

24 HIS LORDSHIP: Mr Grossman?

25 Cross-examination by MR GROSSMAN

1 MR GROSSMAN: Thank you.

2 Mr Kroutil, I just have a few questions. Were you  
3 present at the review meeting for all three days?

4 A. Yes, I was.

5 Q. What was the nature of your participation?

6 A. I had compiled the short master crew list, which was  
7 used. Unfortunately, I had only been there four or five  
8 months prior to that and my direct knowledge of any of  
9 the crew members was either non-existent or very  
10 limited.

11 Q. Thank you. The crew list that you refer to I think we  
12 can see on page 257. I think this is the one you are  
13 referring to, going right up to about page two nine  
14 something.

15 A. Yes. That's the long one. That was not used during the  
16 meeting.

17 Q. That wasn't used?

18 HIS LORDSHIP: That's the long one, he said. What is the  
19 short one? Is it page 256?

20 A. I have it attached to my witness statement.

21 MR GROSSMAN: It was attached? I'm not sure -- go to  
22 bundle VI.

23 HIS LORDSHIP: Could it be page 292 or page 293?

24 MR HUGGINS: Bundle VI, page 1831.

25 MR GROSSMAN: It's actually in bundle VI. Page 1831, yes.

1 MR HUGGINS: I think. Is that right?

2 MR McLEISH: Maybe not.

3 MR HUGGINS: I think we have the wrong reference. Just give  
4 us a moment and we will find it for you.

5 Page 1831-93.

6 MR GROSSMAN: Yes, page 1831-93. This is the one actually  
7 produced by Mr Wilkinson.

8 HIS LORDSHIP: Is that the short list that you are referring  
9 to?

10 A. Yes, it is.

11 HIS LORDSHIP: That's the one at page 1831 -- you are  
12 looking at something slightly different. What  
13 page number are you looking at?

14 A. I'm looking at page 1831-93.

15 HIS LORDSHIP: That's fine. Thank you.

16 MR GROSSMAN: The one we are looking at now is the short  
17 list?

18 A. Yes.

19 Q. Did you keep a copy of this?

20 A. Not following the meeting, no.

21 Q. You didn't? Why not?

22 A. We were advised to delete them.

23 Q. To do what?

24 A. To destroy them, delete them.

25 Q. Why?

1 A. As I understand, they contain personal information  
2 which, once we completed the task for which it was  
3 compiled, we were obliged to delete.

4 MR HUGGINS: It's data privacy.

5 MR GROSSMAN: What about the long list? Was that deleted,  
6 the master list?

7 A. I believe I provided a copy to our solicitors, and then  
8 I deleted it.

9 Q. When did you -- you wouldn't have provided it  
10 immediately, would you? I'm just trying to find out  
11 what was destroyed and what wasn't.

12 HIS LORDSHIP: So the question is: when did he provide the  
13 list to his solicitors?

14 MR GROSSMAN: Yes.

15 It must have been after the proceedings started?

16 A. It would have been after the proceedings, yes.

17 Q. So you kept a copy of that long list?

18 A. For possibly a few days, yes.

19 Q. Why didn't you destroy it immediately?

20 A. Because I wanted to make sure that the solicitors had  
21 a copy of it.

22 Q. So you sent it to the solicitors immediately, within  
23 days, of the decision being taken to get rid of the 49  
24 people?

25 A. That's the advice that I received and I complied with

1 that.

2 Q. That's what happened?

3 A. I believe so, yes.

4 Q. Go to this list at page 1831. I just want to ask you  
5 one or two points. You have explained it in your  
6 statement, but in the captions at the top, there's  
7 something -- it says "No AEP". I think that is a lunch,  
8 is it?

9 A. Yes, it was.

10 Q. Can you explain the nature of this, please?

11 A. I believe, once each year, each crew member has to  
12 undergo an emergency procedures training refresher  
13 course. It's a day that they spent at Cathay City.  
14 During that day of training, they were at that time  
15 invited to attend a lunch.

16 Q. If they didn't attend, it's a black mark against them?

17 A. If they did not attend, there's an X in that column.

18 Q. So you're invited for lunch, you don't attend, and is  
19 there a black mark against you, as it were?

20 A. I didn't invite the crew members to lunch.

21 Q. Of course. I understand.

22 HIS LORDSHIP: But is there any particular reason that it  
23 appears on the list?

24 A. I was asked to add that column in there and I was  
25 provided with a list of names of those crew members who

1 did not attend that lunch.

2 HIS LORDSHIP: I see. What was the function of adding that  
3 column there?

4 A. I believe it was seen that those individuals who refused  
5 to attend that lunch were possibly less than friendly.

6 HIS LORDSHIP: So Mr Grossman is right: if you don't attend  
7 the lunch you get a black mark?

8 A. I accept that.

9 MR GROSSMAN: When you say "refused to attend", I think what  
10 you mean is that they just didn't accept the invitation?

11 A. Fair enough.

12 Q. It's clear from what we know that the top 49 listed on  
13 here, on this document we are looking at, were not  
14 the 49 necessarily that were dismissed; is that right?

15 A. Yes.

16 Q. That is correct, is it? For instance, if you look at  
17 number 39, you see Mr Demery.

18 A. Yes.

19 Q. He was not dismissed. I'm not saying he should have  
20 been, but why not?

21 A. The members of that review team didn't feel that he  
22 should have been dismissed.

23 Q. So what then, forgive me, was the purpose of producing  
24 this document, if it wasn't to see who were the worst  
25 performers, as it were?

1 A. I think, simply put, all crew members were reviewed, but  
2 this list helped to sort of focus the team on a priority  
3 basis, if you will.

4 Q. Not a strict priority basis?

5 A. No. Many individuals, the majority of the individuals  
6 on this list were not -- didn't have their contracts  
7 terminated, and there were some who weren't on this list  
8 who were terminated.

9 Q. During the discussions, was this failure to turn up to  
10 lunch discussed?

11 A. It was discussed only insofar as that being but one  
12 indication of their attitude towards management.

13 MR GROSSMAN: Thank you.

14 HIS LORDSHIP: Mr Grossman, that's it?

15 MR GROSSMAN: I have finished.

16 HIS LORDSHIP: Mr Huggins?

17 MR HUGGINS: I'm so sorry, my Lord. I was asking for  
18 instructions.

19 HIS LORDSHIP: That's all right. Do you have any questions?

20 MR HUGGINS: No, I haven't, my Lord, but I tell you what --  
21 well, I do, but it may be that we need to just clarify  
22 something, because a wrong impression might be given.

23 HIS LORDSHIP: That's the function of re-examination.

24 MR HUGGINS: Well, my Lord, not quite, with this witness,  
25 but I will come to it in a moment.

1           Mr Kroutil, the bit about the destruction of the  
2           short list document, was that instruction given to  
3           everyone at that meeting, including Mr Wilkinson?

4   A.   Yes, it was.

5   Q.   Was the reason anything to do with data privacy? You  
6           said something about private information.

7   HIS LORDSHIP: I think the better way to do it is, "What was  
8           the reason for it?"

9   MR HUGGINS: I know, my Lord, but -- all right.

10           Did you know what the reason was? If necessary,  
11           I will call another witness, if you don't know.

12   A.   I was of the understanding that it was due to data  
13           privacy.

14   Q.   And the long list was given to the solicitors?

15   A.   Yes, it was.

16   MR HUGGINS: Thank you very much.

17   HIS LORDSHIP: Any other questions, Mr Huggins?

18   MR HUGGINS: The lunch aspect. In the amount of time you  
19           had been there, did you know what the purpose was of the  
20           particular lunch we were talking about?

21   A.   Yes, I did know.

22   Q.   Will you tell his Lordship about that?

23   A.   It was a --

24   Q.   Because the impression may have been given by Mr --

25   HIS LORDSHIP: Never mind what the impression is.

1 MR HUGGINS: As your Lordship pleases.

2 HIS LORDSHIP: You just asked the question.

3 MR HUGGINS: Of course, my Lord.

4 HIS LORDSHIP: Then he answers it, and you can make  
5 submissions later. What is the answer?

6 A. The purpose for the lunch was to provide an opportunity  
7 for both the managers, in flight operations as well as  
8 crew members, to sit in an informal setting, exchange  
9 views over lunch, in a more relaxed atmosphere, and  
10 an opportunity for the crew members to get things off  
11 their chest or to ask questions and provide their input  
12 into different issues that affected them.

13 MR HUGGINS: Thank you. I have no other questions.

14 Thank you, my Lord.

15 HIS LORDSHIP: Thank you very much, Mr Kroutil, for coming  
16 to give evidence this afternoon.

17 MR HUGGINS: Would your Lordship give me one moment?

18 HIS LORDSHIP: Certainly.

19 MR HUGGINS: I thought we might need to recall Mr Rhodes,  
20 but I don't think there's any necessity for that.

21 HIS LORDSHIP: I think that completes the witnesses for this  
22 afternoon.

23 MR HUGGINS: My Lord, it does.

24 HIS LORDSHIP: There is only one other witness, that's  
25 Mr van Keulen, who will be here at 10 o'clock tomorrow;

1 is that right?

2 MR GROSSMAN: Yes, he will.

3 HIS LORDSHIP: It is likely, therefore, that we will finish  
4 with Mr van Keulen some time tomorrow morning.

5 MR GROSSMAN: Yes.

6 HIS LORDSHIP: As I mentioned, after that, whenever we  
7 finish with Mr van Keulen, I would like to have a short  
8 case management conference with counsel, and just go  
9 through the list of issues and try to narrow down the  
10 issues, to see what's really in dispute. Insofar as  
11 issues need to be sharpened, focused, then let's try and  
12 identify that.

13 I may give some preliminary thoughts and some  
14 suggestion as to where I might be helped by counsel in  
15 their written submissions, where I would probably be  
16 looking to counsel for guidance in relation to the  
17 written submissions.

18 The rules would remain the same. Wherever we finish  
19 with that short case management conference tomorrow, we  
20 will adjourn on Thursday. We will have written closing  
21 submissions by 5 o'clock on Wednesday. Please deliver  
22 them to chambers, not downstairs, so I'm sure to see it  
23 on the Wednesday. Then one day for everyone to see what  
24 everyone is saying, and then closing submissions on  
25 Friday the 23rd.

1 MR HUGGINS: Thank you, my Lord.

2 MR GROSSMAN: Thank you, my Lord.

3 HIS LORDSHIP: We will resume then at 10 o'clock tomorrow.

4 (2.58 pm)

5 (The hearing adjourned until 10.00 am

6 the following day)

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

	INDEX	
		PAGE
1		
2		
3	MR ANTHONY NIGEL TYLER (sworn) .....	1
4	Examination-in-chief by MR HUGGINS .....	1
5	Cross-examination by MR GROSSMAN .....	4
6	MR PHILIP CHEN NAN LOK (sworn) .....	43
7	Examination-in-chief by MR HUGGINS .....	43
8	Cross-examination by MR GROSSMAN .....	47
9	MR NICHOLAS PETER RHODES (on former .....	60
10	oath)	
11	Cross-examination by MR GROSSMAN .....	60
12	(continued)	
13	MR ZDENEK KROUTIL (sworn) .....	133
14	Examination-in-chief by MR HUGGINS .....	133
15	Cross-examination by MR GROSSMAN .....	137
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		