

Thursday, 15 October 2009

(10.02 am)

HIS LORDSHIP: Mr Grossman.

MR GROSSMAN: My Lord, I call Mr van Keulen.

MR HENDRICK VAN KEULEN (sworn)

Examination-in-chief by MR GROSSMAN

Q. Mr van Keulen, there are a number of files just to your right. I wonder if you could look at bundle IV, please. I would like you to have a look, please, first of all at page 1135 to identify your first statement. That goes to 1150, I think. Your signature is at the back. Just confirm that's your statement; is that correct?

A. Yes, it is.

Q. Just before we leave it, would you go back to page 1145. In paragraph 18 there seems to be a typo. It says:

"I became a member of the HKAOA in or around."

Then there is then a full stop. What date should that be?

A. The omission there is that I joined Cathay Pacific in April of 1989 and I would have joined the AOA within a short time after that, approximately May of 1989.

Q. Thank you. Then would you look, please -- go back in that file to page 1006. This is a statement which has your signature, I think, on the last page, 1020. Just confirm that, please. It starts at page 1006 and goes

1 to page 1020.

2 A. I'm on the wrong page here. Just a moment. Up until
3 which page?

4 Q. 1020.

5 A. Yes, that's correct.

6 Q. Do you adhere to what's stated in those two statements?

7 A. I do.

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

9 A. Yes.

10 MR GROSSMAN: Thank you.

11 HIS LORDSHIP: Mr Huggins?

12 Cross-examination by MR HUGGINS

13 MR HUGGINS: Mr van Keulen, when did you get in to Hong Kong
14 this time?

15 A. Yesterday morning, Mr Huggins.

16 Q. Have you been kept up to date in any shape or form by
17 anyone about the evidence that's been given in this
18 case?

19 A. I've been reading the transcripts.

20 Q. Those were sent to you, were they?

21 A. Pardon me?

22 Q. Those were sent to you?

23 A. Yes.

24 Q. By email while you were out of Hong Kong?

25 A. By email, yes.

1 Q. So that right from the start of the trial you have been
2 kept up to date?

3 A. That's right.

4 Q. If I may give you some idea as to the sort of form,
5 I will be over by 11.30, and I will try and be over
6 before that.

7 A. I understand.

8 Q. Mr van Keulen, where were you based?

9 A. I was based in Los Angeles.

10 Q. Was your family, most of your relatives, in Canada?

11 A. My immediate family was in Los Angeles with me.

12 Q. Yes, but your relatives -- you made a statement to the
13 effect that Los Angeles was the nearest base to where
14 your relatives in Canada were; is that right?

15 A. I don't recall that particular statement, but it would
16 be true, because my extended family would be in Canada,
17 yes.

18 Q. So Los Angeles was the nearest base to --

19 A. Yes, at the time, North American basings were offered,
20 that's correct.

21 Q. Did you live out of LA itself?

22 A. I lived approximately 80 miles north of Los Angeles,
23 north of the airport.

24 Q. When you were on reserve duty, just tell us what the
25 form would be: when would you set off from home to go to

1 Los Angeles?

2 A. Because of the proximity to the airport, I wouldn't have
3 to leave home to go to the airport until I was called.

4 Q. And it would take how long to go the 80 miles?

5 A. In normal traffic, it would take me just slightly under
6 an hour and a half, 90 minutes.

7 Q. Did you find it rather tiresome, having to have reserve
8 in LA, going there and sometimes not even being called?

9 A. That's what reserve is. When you're on reserve, you
10 make yourself available.

11 Q. Tell me -- I won't dwell on it -- but it is a fact,
12 isn't it, that of the time that you were sick, off sick,
13 something like 58 per cent of the time was when you were
14 on reserve; is that not right?

15 A. I don't have those facts, my Lord.

16 Q. Can I go back a bit. A member of the union from almost
17 the time you joined, within a month or so?

18 A. That's correct.

19 Q. When you joined Cathay, of course. I imagine I think
20 you understood it that way.

21 A. Yes.

22 Q. A regular attendee at meetings?

23 A. When you say "regular", if I was -- during the time
24 before my basing, if I was not working, not resting,
25 I would try to attend the meetings whenever I could,

1 yes.

2 Q. I mean, I'm only quoting you yourself in paragraph 19 of
3 your statement:

4 "I regularly attended meetings of the [union]."

5 A. Yes.

6 Q. You went on to say:

7 "I knew that for some time the [union] and the
8 management of the defendant were having a dispute
9 concerning contractual entitlements ..."

10 That's one of the things they were having disputes
11 about; you knew that?

12 A. That's correct, yes.

13 Q. What in particular do you recall? I know it's a long
14 time ago, but help us, will you, about what the dispute
15 was about?

16 A. The dispute, as I recall, was there was a situation
17 where the management of Cathay was changing our contract
18 on a yearly basis, and the union was trying to negotiate
19 with the company to reach a negotiated settlement rather
20 than the management simply imposing the contract on its
21 pilots.

22 Q. We will come to some documents shortly which may prompt
23 your recollection about the other specific matters about
24 contractual entitlements, but are those the ones that
25 you can recall at the moment?

1 A. Whatever was in our contract at the time would be -- was
2 what I would consider contractual entitlements.

3 Q. And rostering, you were aware about a dispute between
4 the union and the management over rostering?

5 A. Yes, I was.

6 Q. And what was your interest in that?

7 A. The rostering affects every pilot personally. There was
8 a long-standing consensus that the rostering was
9 basically being handled inadequately, and it was
10 affecting basically the wellbeing of the crew.

11 Q. As far as you were concerned, were you really quite
12 unhappy with the way the management were rostering you
13 and your colleagues?

14 A. I wouldn't say I was unhappy, but I was definitely
15 concerned with the effect that it was having on me
16 personally, yes.

17 Q. How would you describe your feelings about it?

18 A. I'm not sure I understand exactly what you're asking me.

19 Q. Don't worry about whether there's any hidden agenda.
20 I'm just trying to get an idea of how you felt about it.

21 HIS LORDSHIP: I think Mr Huggins is saying that you were
22 uncomfortable with the word "unhappy" but you said that
23 you were concerned. What, to your mind, is the
24 difference between being unhappy and concerned?

25 A. I guess maybe if I just elaborate on being concerned,

1 will that answer the question?

2 HIS LORDSHIP: It's up to you, Mr van Keulen.

3 A. My concern was that the rostering had deteriorated over
4 the number of years that I had been with Cathay, where
5 we were at one time rostered to fly 70 hours a month and
6 then, prior to my dismissal in 2001, we were up to --
7 I was up to flying approximately 90 hours a month,
8 within the same -- obviously the same timeframe.

9 The type of flying I was doing, being on a base in
10 Los Angeles, my flying consisted almost exclusively of
11 ultra-long-haul flights, so that every flight would be
12 a trip from Los Angeles to Cathay, where I would be
13 going through what initially was four jetlag cycles
14 a month to now six jetlag cycles a month, along with the
15 sleep deprivation that I would be experiencing during
16 every one of those trips, because most of the flights at
17 that time were leaving in the middle of the night.

18 So over time it just became physically much, much,
19 much more tiring to complete my task.

20 HIS LORDSHIP: Mr Huggins.

21 MR HUGGINS: Thank you, my Lord.

22 You go on to say that you were also aware of the
23 dispute between the union and management about the
24 absence management programme?

25 A. That's correct.

1 Q. Was that something that you had views about?

2 A. Yes. My feeling was that any type of programme like
3 that, where management seeks to monitor your
4 performance, there's always the feeling that you are
5 pressured into doing something that you maybe otherwise
6 would not do, for fear of repercussions.

7 Q. You go on to say:

8 "... I supported the [union] in its dispute with the
9 defendant management with regard to rostering and to the
10 plaintiffs' contractual entitlements, and I supported
11 the stance taken by the [union] against the AMP."

12 Have I got that?

13 A. That's correct.

14 Q. Can you just elaborate on the stance that you were
15 referring to? What particular stance were you
16 supporting there?

17 A. Whatever the union's objective and strategy was. My
18 feeling was that, as a member of the union, I would rely
19 on the union to represent me in its negotiations with
20 Cathay management.

21 In that, I basically took an overview from there,
22 from that point on, that I supported the initiative
23 and I left it to the union and the union general
24 committee then to formulate their strategy and go ahead
25 and try to achieve the objective.

1 Q. Just tell us, will you, something about the maximum
2 safety strategy. What was your knowledge about that?

3 A. Very little, my Lord. I was obviously -- records should
4 show I was on leave during that time, and I was aware of
5 the term after, in the information that was basically
6 either distributed in newsletters or on the website.

7 While I was on leave, I had my computer with me
8 and I would from time to time just keep myself informed.
9 I would check to see what was going on, because I knew
10 there was -- there were different events happening while
11 I was away, so in order to keep myself informed, I would
12 check the website.

13 So I knew in a general way about MSS, but I never
14 saw the document, I never read the document; I don't
15 know what the specifics of it were.

16 Q. I see in your statement that you have used these words:

17 "I was ... aware that most probably MSS was going to
18 be adopted and followed by aircrew officers during
19 my ... leave."

20 Could you just explain what you meant by that?

21 A. That was pretty much what I just said in my last answer,
22 Mr Huggins, that I was keeping myself informed as to
23 what was happening, so information about MSS was being
24 promulgated via the website and via newsletters.

25 So at one point, I would have been aware that the

1 union had announced their MSS strategy, and I guess that
2 was a speculation on my part that certain members of the
3 union would probably follow the union's direction.

4 Q. You go on to say:

5 "I knew this because of information contained on the
6 HKAOA website."

7 A. As I've just said, yes. That information came from what
8 I read on the website.

9 Q. The words that I just read to you, were those your own
10 words or did somebody else write that and you agreed
11 with it?

12 A. No, those were my words.

13 Q. Since you have used the word "promulgate",
14 Mr van Keulen, I wonder whether you would just go with
15 me, please, to a document you will find at the end of
16 bundle X.

17 HIS LORDSHIP: This is the new document?

18 MR HUGGINS: The new document, my Lord, which I know my
19 learned friend, because of an error in the communication
20 between us as to his fax number, I sent it by fax within
21 minutes of speaking to him last night, but he told me
22 this morning he didn't get it, the reason being that the
23 last three numbers were reversed.

24 HIS LORDSHIP: So some mysterious person in Hong Kong has
25 got this petition?

1 MR HUGGINS: I don't know, my Lord, but all I do know is
2 that neither of us are going to accept responsibility
3 for the number having been wrong.

4 In any event, the important thing is that --

5 MR GROSSMAN: I plead guilty to that.

6 HIS LORDSHIP: Mr Grossman has accepted responsibility.

7 MR HUGGINS: Mr Grossman is a gentleman.

8 My Lord, this morning I did show him the fax and in
9 fact highlighted the bits I was interested in.

10 He had an opportunity, I think, of speaking to you
11 about it; is that right, Mr van Keulen?

12 A. That's correct, yes.

13 Q. So you don't feel in any way disadvantaged?

14 A. No, sir.

15 Q. If you do, please say so and you can have more time.

16 A. No, sir.

17 Q. Good. It is actually a document that I think you
18 probably are aware of anyway, because if you go to
19 page 380, at the back of the bundle, we will see here
20 one of the documents filed in US proceedings, where you
21 figured as the 1st plaintiff, "Hendrick van Keulen",
22 along with Pierre Morissette; you can see other names
23 there.

24 The only ones I will focus on, because they are also
25 plaintiffs in this case: Brian Keene, Craig Young and

1 Damon Neich-Buckley. Do you remember these proceedings?

2 A. Yes, I do.

3 Q. I expect you were pretty familiar with them, weren't
4 you? They lasted some time in the United States before
5 they were stayed; is that right?

6 A. That's correct.

7 Q. Forgive me for asking, but were those proceedings funded
8 by the union in Hong Kong?

9 A. I'm not aware of who funded those proceedings, my Lord.

10 Q. Anyway, it didn't have to come out of your own pocket?

11 A. That's correct.

12 Q. This is a claim by you in America, amongst other things,
13 for defamation; is that right?

14 A. That's correct.

15 Q. We see that on page 389, complaining about the
16 statements of Mr Tyler and Mr Chen, which are now the
17 subject of these proceedings?

18 A. That's correct.

19 Q. I see from this document at page 390 two things: first
20 of all, that you were claiming in excess of
21 US\$100 million for this; that's the first thing I note.
22 The other thing I note is that the date of these
23 proceedings was 3 October 2001.

24 A. I see that as well.

25 Q. Could you just help me as to how it came about, then,

1 that the defamation claim in the Hong Kong proceedings
2 was not added until June 2006?

3 A. I can only -- I can't very well speak to why they were
4 added here at that particular point in time. That would
5 probably be a question for the legal team here. But
6 I can speak to the timeline and sequence of events of
7 what happened in California, my Lord, if that's the
8 question.

9 Q. I was interested in why it didn't surface here until
10 2006. But you've told us that you're not able to tell
11 us, so I won't press you on it.

12 HIS LORDSHIP: I think I have already suggested that I don't
13 think I'll be assisted, in any event, by whatever the
14 answer might be.

15 MR HUGGINS: Very well, my Lord.

16 Mr van Keulen, I must pass on immediately, in the
17 light of that indication, which I had forgotten, from
18 before.

19 Could I please take you then to page 381 and 382.
20 It appears that in those proceedings -- if we go to 382,
21 you will see that the very word you used a moment ago,
22 "promulgate", is used in a slightly different context:

23 "Concerned that Cathay's safety standards would
24 continue to erode, on 3 July, 2001, the pilots,
25 including plaintiffs herein" -- that's including you --

1 "promulgated a campaign of maximum safety entitled the
2 maximum safety strategy ..."

3 Do you remember that being put forward on your
4 behalf in the United States?

5 A. I don't have any direct recollection, but from being
6 reminded by the words in front of me, yes, I do.

7 Q. Was that true, as far as you were concerned?

8 HIS LORDSHIP: Is what true?

9 MR HUGGINS: The statement that was being made in
10 paragraph 8.

11 A. Not exactly, no, because the plaintiffs -- it says the
12 plaintiffs promulgated a campaign of maximum safety
13 entitled MSS. In my opinion, that was promulgated by
14 the union. And myself, for instance, I didn't have
15 an opportunity to participate because I was dismissed
16 prior to --

17 Q. But -- sorry -- was there any accuracy at all in the
18 statements being made in this statement on your behalf
19 about your connection with the MSS?

20 A. I think my connection would be through my association
21 with the union, yes. That would be my understanding.

22 Q. Would there at least be a grain of truth in it, to the
23 extent that you supported the introduction of that?

24 A. I supported the union's strategy in what they're trying
25 to, yes, accomplish.

1 Q. Could you perhaps in your own words, so I don't put
2 words into your mouth, just tell us what that -- what
3 they were trying to achieve?

4 A. At that particular time, my understanding was that they
5 were trying to recommence negotiations with the company,
6 that issues of rostering and other things had been on
7 the table to negotiate, and the company had taken
8 a position where they had refused to or weren't
9 negotiating. So the immediate strategy or the
10 short-term strategy was to try and get Cathay management
11 back to the negotiating table.

12 Q. Can I ask you this. Go, please, to another document
13 filed in those proceedings on your behalf. I have tried
14 to preserve the trees as much as possible and only
15 select what I believe to be relevant to my questions,
16 but we have available the whole document, if your
17 counsel would like to look at it in any detail, or if
18 you'd like to look at it in any detail.

19 Can we just begin, please, at page 393, paragraph 7,
20 another statement made on your behalf by your American
21 lawyers. At the bottom of the page:

22 "Finally, on 3 July, 2001, deeply concerned about
23 ever-eroding safety margins, Cathay's pilots (including
24 petitioners)" -- that's you -- "issued a safety policy
25 called the maximum safety strategy ... The MSS addressed

1 crew rostering, workloads, flying conditions, and the
2 dangerous conditions associated with cockpit fatigue."

3 Do you see that?

4 A. Sorry, I'm just not with you. Are we talking at the
5 bottom of 393 over to 394?

6 Q. 393 goes over to 394.

7 A. Starting at the bottom?

8 Q. At the bottom of 393, starting with the words, "Finally,
9 on 3 July".

10 A. Okay. I'm there now.

11 Q. What, if any, truth was there in that statement made on
12 your behalf?

13 A. Not having read the MSS document, I can't really attest
14 to the accuracy of what's being said there. We were
15 obviously -- or I was acting on the advice of counsel at
16 this time, and, you know, this is their document and not
17 mine.

18 Q. So that where it says, for example, that you were deeply
19 concerned about the ever-eroding safety margins, were
20 you personally --

21 A. Yes, I was.

22 Q. You were? So you would have felt pretty strongly,
23 wouldn't you, that something needed to be done to put
24 that right, if that was your feeling?

25 A. Yes, I would.

1 Q. Can I then go back in time. You would help me if you go
2 back to page 101 in this document, and page 102. You
3 will see there at page 101 reference to a -- it's really
4 a reminder by the union to its members about
5 a resolution on contract compliance which became
6 effective on 11 July 2000. We see that in paragraph 3.
7 Can you just remind yourself of that? You have probably
8 seen questions about this in the transcripts.

9 A. Yes, I have.

10 Q. Over the page, they set out a number of things which the
11 union is encouraging its members about. Did you notice
12 me asking questions about this in the transcript?

13 A. Yes, I recall that.

14 Q. Good. Can I now ask you, perhaps: some of the things
15 it's reminding the aircrew that they are not required to
16 do -- let's go down six bullet points. For example, you
17 are not required "to discuss any matter of a medical
18 nature with members of crew control or flight operations
19 management. Specifically, you are not required:

20 -- To give reasons for being unfit for duty beyond
21 stating whether you were 'ill' or 'injured'."

22 Do you remember that sort of indication being given,
23 encouragement being given?

24 A. I would have most likely read this document, yes, this
25 newsletter.

1 Q. So that in relation to your own experience, where I have
2 suggested to you that there were a number of occasions
3 when you called in sick on your reserve days, would you
4 have felt that perhaps it might be of assistance to
5 actually ring the management and explain the
6 difficulties you were having, or did you think, "Oh no,
7 I don't have to do that, I'm not required to do that"?

8 A. No, I never thought that that was not a requirement. My
9 relaying my own personal situation and wellbeing to the
10 company was done through the company medical doctor.
11 I recall at least two of my medicals prior to my
12 dismissal, that would take me back to a year beforehand
13 or almost a year, where I expressed concern with our
14 company medical doctor that I was experiencing these
15 fatigue cycles and, you know, the stress associated with
16 those and other things like AMP and whatnot. He asked
17 me at the time, "Would you like some time off? In other
18 words, do you want me to write you a chit for three
19 weeks off or something like that?", and I told him
20 I didn't want to do that because that would withdraw my
21 services from the company over a period of time. I said
22 what I would rather do is take it on
23 a situation-by-situation basis, so that my services
24 would be available for the company when I was feeling
25 well or considered myself fit to fly, but when that was

1 not the case then I would notify the company that
2 I wasn't.

3 I always did that. I never did that in a way that
4 I left the company hanging. In other words, I wouldn't
5 call up an hour before the flight and say, "Sorry, I'm
6 unfit for duty". If I felt that I was going to be unfit
7 for an upcoming duty period, be it reserve or flying
8 duty, I would, if possible -- obviously there are cases
9 when you do become physically sick at the last moment,
10 but whenever possible, if my feeling was that I would be
11 unfit for a duty period, I would let crew control know
12 in such a way that they were able to roster someone
13 else, find a replacement with the least amount of
14 disruption.

15 Q. Mr van Keulen, it may be that I'm not getting through to
16 you the precise point that I'm making, and I know that's
17 my fault.

18 Can I perhaps approach it this way: can we go to
19 your own statement on this subject, at page 1147 in
20 bundle IV. In paragraph 24, you say, some five lines
21 down:

22 "I became sick quite often. I had to recover to
23 a normal standard of health. I was sick about once
24 every 3 months. The time to recover was usually 10 to
25 12 days."

1 Then this:

2 "I discussed this situation at length with the
3 company doctor during each 6 month medical."

4 So, yes, you spoke to your doctor.

5 A. Yes.

6 Q. But of course a doctor would have obligations of
7 confidentiality in relation to you. Even though he may
8 have been the company doctor, he couldn't speak to the
9 company about this. Do you agree with that?

10 A. I agree, yes.

11 Q. "He normally asked if I needed a period of time off to
12 recover" -- this is what you are telling us --
13 "and I replied that I would handle it on a trip by trip
14 basis."

15 A. That's right.

16 Q. "In this manner", you say, "the company was aware of the
17 effect the roster was having on my personal health and
18 ability to operate [Cathay] flights safely."

19 That's the bit I don't follow. That's your
20 statement, isn't it?

21 A. That's correct.

22 Q. Can you help me with that, because of course the doctor
23 couldn't have a word with Cathay --

24 A. Yes, he could.

25 Q. Forgive me, how?

1 A. He couldn't discuss with Cathay management directly my
2 medical situation, but on an overview, if he has, let's
3 say, a number of pilots coming to him with this same
4 problem, he could then very well go to the company and
5 say, "There is a problem here. I have numerous people
6 coming to me and saying that they're tired, they're
7 fatigued, their roster is doing this to them. You need
8 to do something". So in that manner I feel that, yes,
9 he did have a way of making the company aware of these
10 fatigue problems.

11 Q. Is that what you meant by "In this manner", that is
12 through the doctor, "the company was aware of the effect
13 the roster was having on my personal health"?

14 A. That's correct.

15 Q. Very well. But you did not yourself, did you, get in
16 touch with the management and communicate to them that
17 you felt you were having problems?

18 A. Not myself directly, no. That was being done by the
19 union on my behalf.

20 Q. Indeed, what you did or didn't do was consistent, was it
21 not, with what the union was encouraging its members,
22 saying you are not required "to discuss any matter of
23 a medical nature with members of crew control or flight
24 operations management. Specifically, you are not
25 required:

1 -- To give reasons for being unfit for duty beyond
2 stating whether you were 'ill' or 'injured'."

3 That in effect was what you were doing, was it not?

4 A. No, it was not.

5 Q. Very well. Do you see -- I just take, for example,

6 another example of the things that people were

7 encouraged or not encouraged to do. The last bullet

8 point on that page refers to --

9 A. Sorry, are we back to --

10 Q. Page 102. You are quite right. I should have told you

11 that.

12 A. Which page, please?

13 Q. 102.

14 A. 102, yes.

15 Q. "Aircrew are NOT required", it says at the top, in large

16 letters, to do a number of things, including "To attend

17 AEP luncheons".

18 Let's just pause there for a moment. Annual

19 emergency procedures luncheon; that's what that is

20 about, isn't it?

21 A. That's correct.

22 Q. So that on the days when there were the annual emergency

23 procedures course -- it may take, what, a whole day?

24 A. Usually.

25 Q. Usually a whole day. And that was in Cathay City, was

1 it not?

2 A. Correct.

3 Q. So you would have to be there all day for this course
4 anyway?

5 A. That's correct.

6 Q. There were lunches, were there not, where the management
7 in effect said to all the pilots, "Come and have lunch
8 so that we can have an exchange of views on any matters
9 which are causing you concern"; that was part of the
10 purpose of the lunch, was it not?

11 A. I can't say to that, my Lord. What I recall is that
12 during the process of the day, when lunchtime came, our
13 facilitators would say that you are invited to lunch at
14 the invitation of the company. I don't recall anyone in
15 management saying or making us aware that these were
16 opportunities to come and discuss matters with the
17 company.

18 Q. But that was your understanding of what the invitation
19 was about, was it not?

20 A. Not necessarily, no.

21 Q. You say "not necessarily", but forgive me, that was the
22 general understanding, was it not?

23 A. No, it wasn't.

24 Q. Can you help me with this particular aspect of this
25 newsletter, telling people, "Look, you don't have to

1 attend those, you know"?

2 A. Let me -- you asked -- the question was, was that the
3 general understanding. That may or may not have been
4 the general understanding. What I'm trying to answer is
5 my understanding, and my understanding is that I have no
6 recollection that that was what the company wanted us to
7 do.

8 If I may expand a little bit: if I was in Hong Kong
9 on an AEP while I was on a base, I may be there for one
10 day between arriving on a flight and leaving on
11 a flight. Lunch hour during the day may have been
12 an opportunity for me to take care of some personal
13 business, be it banking or whatever. So if there was
14 not a requirement to be at the luncheon, I probably
15 utilised that time to my personal benefit.

16 Q. So it was not a requirement, you were not obliged by
17 your contract to attend it --

18 A. Not that I was aware of.

19 Q. The union were encouraging people essentially not to
20 attend, were they not? You at least understood that?

21 A. That's the way I interpreted what's written in this
22 newsletter, yes.

23 Q. So "I'm not required to, so I won't"?

24 A. No. The newsletter says you're not required to. I'm
25 saying that I didn't because I may have had other things

1 to do.

2 HIS LORDSHIP: Are you saying that he should have attended
3 the AEP luncheon; is that your case?

4 MR HUGGINS: My Lord, I am leading into -- perhaps in
5 a laborious way, and your Lordship will forgive me,
6 I hope, on this last day, and I will be finished
7 shortly -- trying to lead into his understanding of
8 contract compliance.

9 Can we ask in more general terms --

10 HIS LORDSHIP: Sorry, but I asked you, Mr Huggins, are you
11 suggesting that he should have attended the luncheon?

12 MR HUGGINS: My Lord, I am suggesting that if he took the
13 view, "I'm not required to do it. I know here is
14 an opportunity to tell the management about things that
15 are concerning me -- for example, why I have been ill
16 for all these occasions -- to tell them, 'This is being
17 caused by your rostering programmes'", but he felt
18 that's going beyond --

19 HIS LORDSHIP: That is a long answer to a short question of
20 mine: you are not suggesting that he should have
21 attended the AEP luncheons? "Yes" or "no", Mr Huggins.

22 MR HUGGINS: Yes in this sense, but not in the sense he was
23 contractually obliged to by --

24 HIS LORDSHIP: So you are suggesting that he was obliged in
25 what sense?

1 MR HUGGINS: I am suggesting to him that it would have --

2 You understood that it might have been of assistance
3 to the company?

4 A. You are implying that I knew something that I didn't,
5 and, my Lord, what --

6 HIS LORDSHIP: If I understand Mr van Keulen, he says his
7 understanding was, "You're just invited to lunch".

8 MR HUGGINS: As your Lordship pleases. I will move on.

9 Can you help us in more general terms,
10 Mr van Keulen --

11 A. Certainly.

12 Q. -- with the assistance you will have seen from the
13 transcripts that your colleagues have given his Lordship
14 on a number of occasions about the contract compliance
15 campaign. Tell us in your own words how you understood
16 it; what did you think it was and what its purpose was
17 to be?

18 A. For me, the easiest way to define contract compliance is
19 to look at basically the opposite. The opposite of
20 contract compliance is to be in violation of your
21 contract. So I never behaved in that manner, so
22 everything I did in the daily course of my behaviour
23 towards my work and towards my employer was contract
24 compliance.

25 What I believe the concept of a contract compliance

1 campaign deals not necessarily with what's in the
2 contract but what's outside the contract, and to me
3 that's what I call the goodwill of the pilots. In other
4 words, what we're doing is we're managing our goodwill.

5 Historically, the day I joined Cathay, when it was
6 a smaller company, goodwill was a two-way street. It
7 was needed from day one by the company to manage the
8 roster. This is not something that happened in the last
9 two years prior to my dismissal.

10 I can recall from the earliest days that I would be
11 called up on a day off and asked to come and operate
12 a flight. And if I was available -- I used the same
13 approach that I did in 2001 as I did in 1989. If I was
14 available and there weren't any other priorities, then
15 I would do what I could to assist the company.

16 HIS LORDSHIP: Just continuing -- because I'm not sure he is
17 quite finished yet -- you say the concept is the
18 management of goodwill, so therefore contract compliance
19 means you show less goodwill? Or you show no goodwill?

20 A. To me personally it wouldn't have made any difference,
21 my Lord, because --

22 HIS LORDSHIP: To you personally, it wouldn't have made
23 a difference, but your understanding of the campaign
24 was, in relation to goodwill, what were the pilots being
25 urged to do by the union?

1 A. Your Lordship's words are probably correct, to use more
2 discretion with the giving of the goodwill.

3 HIS LORDSHIP: Mr Huggins?

4 MR HUGGINS: And the expression used by your colleagues,
5 withdrawing goodwill? You are nodding.

6 A. The same thing.

7 Q. Another expression, actually, which only emerged from
8 Mr Young the other day. I don't know whether you saw
9 it; you may be able to help us. Mr Young's recollection
10 was of what he called an acronym: WOE, withdrawal of
11 enthusiasm. Did you hear that too?

12 A. I'm familiar with that term, yes.

13 Q. Was that in the context of the contract compliance?

14 A. It's another way of saying the same thing, yes.

15 Q. So that was what was being -- that was the way it was to
16 be implemented?

17 A. That's what the union was suggesting in their
18 newsletters, yes.

19 Q. You were in support, as you've told us earlier, of the
20 way in which the union was to achieve its aims and
21 objectives? You left it up to them to do that?

22 A. To answer that, my Lord, I think if I may I'd have to
23 say what my overall view was of the union strategy.

24 When the union was putting out these newsletters and
25 initiating these campaigns, for lack of a better word,

1 or the word that was used, I didn't read the newsletters
2 and dissect them paragraph by paragraph, line by line,
3 word by word, as we're doing here. I took an overview:
4 this was what the union were trying to do. They were
5 competent, in my viewpoint, to develop strategies to
6 obtain those objectives.

7 Foremost in my mind was that whatever the union
8 asked us to do, I would do what I felt was proper,
9 according to my own behaviour, my own attitude towards
10 my professionalism, to my job, to the company and to the
11 people I serve, and that's the travelling public.

12 I can only say again that my behaviour did not
13 change. If I was called on a day off and asked to
14 contribute my goodwill to the company, and first of all,
15 if I wasn't in need of rest, if I wasn't in my rest
16 period, if I was fit to fly, I would consider my family
17 priorities, because that's what our days off are for,
18 that we have a life outside of the job, and family is
19 important. If there weren't any priorities, overbearing
20 priorities there, then I would be glad to come to work
21 and help the company.

22 I did not intentionally or with forethought say that
23 if the company calls me I'm going to say no.

24 Q. Were you aware, Mr van Keulen, that the union was
25 encouraging pilots generally -- its members,

1 obviously -- to be, as far as possible, uncontactable
2 for what they perceived to be a perfectly sensible --

3 A. I'm aware of that, yes.

4 Q. To try and achieve for you the kind of resolution of the
5 concerns about things like rostering?

6 A. That's correct.

7 Q. Did you see the sense in that?

8 A. Could you say that again, please?

9 Q. The sense, as I understand it, is: given that you felt
10 pressured by the management to fulfil rostering
11 practices that were unsatisfactory, to use a mild word,
12 you wanted the situation changed, and here was the union
13 saying, "Look, one of the ways to take off this pressure
14 from you is if you're not contactable by them; they
15 can't say, 'Come on, do me a favour, will you do X, Y
16 and Z?'" -- you understood that that was what the
17 contactability being the key was about?

18 A. That's what I interpreted these words to be, yes.

19 Q. Again, it may be that I'm taking far too much time about
20 this, but in a nutshell you had voted in favour of the
21 contract compliance campaign?

22 A. I probably would have, yes.

23 Q. Go to page 116. Did you receive a number of newsletters
24 indicating -- whether or not you dissected them
25 minutely, as you put it --- in general terms that, as

1 far as the union was concerned, contract compliance was
2 working?

3 A. That's what I interpret this newsletter to say, yes.

4 Q. It was encouraging the members to continue with the
5 campaign until such time as the objectives were
6 achieved?

7 A. To me, these newsletters are part of, you know, typical
8 union strategy to, as you say, create pressure or create
9 a perception, to put pressure on the company.

10 I have no way to attest to the accuracy of what the
11 union's saying, if such and such was happening or such
12 and such wasn't happening. So this is basically
13 a typical propaganda to rally the troops.

14 At the same time, these newsletters were coming up
15 from the union. I'm sure, I recall there was also memos
16 or whatever coming out from the company. One salvo
17 would go this way and the other salvo would go this way.
18 In my mind, it was all basically each side trying to
19 create in illusion that this was going to happen or that
20 was going to happen.

21 Q. Just try and understand that -- I think your colleagues,
22 as you have read in the statement, were helping us to
23 understand that of course it wasn't just propaganda to
24 the troops. They understood that the management were
25 going to see this as well, so it was propaganda directed

1 to them.

2 A. That's what I'm trying to say, yes.

3 Q. Words like "bluff" were being used; you would go along
4 with that?

5 A. What word, sorry?

6 Q. Bluff, propaganda?

7 A. Yes, that's another word. Yes.

8 Q. So that seeing this, they might think, "Crikey, if we
9 don't do something, things are going to get worse"; that
10 sort of idea?

11 A. Exactly.

12 Q. There is just one other aspect of this. One sees over
13 the page of the same newsletter that from time to time
14 it would remind its members that it needed collective
15 support for this campaign and indeed would regard it as
16 misconduct by members if they didn't give that support;
17 you understood that to be the position?

18 A. I do.

19 Q. Indeed, on this particular page, it's actually referring
20 to the fact that the union would release names of people
21 who were in breach of the contract compliance campaign?

22 A. I understood.

23 Q. You understood that?

24 A. I understood that.

25 Q. Could you help me, please, with page 120. Here's

1 a newsletter on 30 October, which refers to "numerous,
2 wide-ranging issues that affect us all" -- I'm reading
3 the first paragraph on the left-hand side of the page:

4 "We need to familiarise you with the numerous,
5 wide-ranging issues that affect us all. Your committee
6 has sought reasonable solutions to many issues since the
7 forced pay cuts 16 months ago. However, new and more
8 complex issues arise weekly. As our company expands,
9 management perilously ignores the problems we had before
10 the Asian recession, as well as raising new contractual
11 issues. Management has to understand that our needs
12 cannot be ignored."

13 Do you remember this newsletter?

14 A. I don't remember it, but I probably would have read it.

15 Q. The reason I am taking you to it is that it goes on in
16 the second paragraph to talk about further steps:

17 "Most are probably wondering what 'further' actually
18 means", because in the previous paragraph it said "we're
19 going to go 'further'", and it says:

20 "We've traditionally shied away from industrial
21 action because it's not the intelligent solution. Why
22 beat a donkey when a few carrots should do the trick?
23 However, a more direct approach may now be required. We
24 will have to wait for the outcome of the talks in the
25 next few weeks before we decide on 'further steps'."

1 Just pausing for a moment, can you just help us with
2 your understanding about all this?

3 A. My interpretation is just as it's written there. The
4 company was again trying to rally the troops, trying to
5 create a perception to the management that they were
6 going to take further steps. Whatever those steps would
7 be, I don't know. They probably, as they state there,
8 hadn't decided yet. So that's my interpretation.

9 Q. As you said earlier, this is the sort of line that, if
10 the union put pressure on in this way, you would approve
11 of that, in order to achieve their objectives?

12 A. That's correct.

13 Q. Help me with this, will you? It goes on:

14 "We introduced contract compliance in 1996 but
15 management ignored the problems and now suffers with the
16 inefficiencies. Therefore, without progress in the near
17 future, we may have no choice but to take the next
18 logical step. Time is running out for management."

19 Having reminded you of that, I wonder whether you
20 could just help confirm what we have heard from one of
21 your colleagues, that there had been a previous contract
22 compliance campaign in 1996, and then, after some degree
23 of success with the management in 1998 or 1999, it was
24 then called off, suspended, and then when the union felt
25 it needed to put pressure on again in 2000, the next

1 campaign was begun. Does that meet with your
2 recollection?

3 A. To a certain degree. I wouldn't agree with what you
4 said about the union coming to some sort of agreement
5 with the company in 1988 or 1989. My recollection of
6 the situation in 1999 was that the union was again
7 trying to negotiate in good faith with the company, and
8 again there was difficulty -- I wouldn't say
9 "difficulty" in negotiating, but difficulty in reaching
10 an agreed settlement.

11 My understanding in 1999 is that Cathay management
12 effectively sidestepped the union, when it came down to
13 the final hour, the 11th hour, let's say, and came to me
14 directly in writing, and gave me a letter that said
15 I would either have to accept the contract as proposed
16 by management or be terminated.

17 At that point, I was basically -- I felt that I had
18 no other choice but to sign the contract. So that's the
19 purported agreement that's referred to in 1999.

20 Q. I just wonder about that. I wonder whether you can help
21 us as to what your understanding was as to why it was
22 suspended and then re-introduced then.

23 A. I don't recall that. I'm sorry.

24 Q. But you recall that happened?

25 A. I recall during that timeframe that there were times

1 that negotiations were ongoing, they were on and off
2 again, and there were different campaigns to try and
3 bring the company back to the table, trying to negotiate
4 certain matters.

5 Q. Can we move to page 136, please, Mr van Keulen, another
6 example I have shown to everyone, as no doubt you saw:

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

12 Again, I don't for a moment suggest that you,
13 Mr van Keulen, had any way to measure empirically how
14 much disruption was being caused, but in broad terms
15 this was what the union were saying, and did you have
16 any reason to disbelieve it?

17 A. This is what I understand or interpret them saying, yes.

18 Q. As I say, did you have any reason yourself to disbelieve
19 it?

20 A. Again, I didn't get bogged down with the specifics of
21 these newsletters. I was aware that disruptions, how
22 should I say, problems with rostering had been ongoing
23 since I joined the company in 1989. I didn't know if
24 these particular circumstances were still unresolved,
25 the same problems that were there five years earlier, or

1 whether they were a consequence of other things.

2 I didn't know whether the disruptions were twice as
3 many, 10 per cent as many or anything. So I basically
4 didn't put a lot of weight onto these comments.

5 Q. Page 149, Mr van Keulen:

6 "CONTRACT COMPLIANCE

7 For avoidance of doubt, management has not made
8 significant progress towards our remuneration and
9 rostering concerns and therefore contract compliance
10 campaign remains in full effect."

11 You would have seen that, would you not?

12 A. Excuse me a moment, can you just refer me to that again?

13 HIS LORDSHIP: The bold letters at the bottom of the page.

14 MR HUGGINS: The big bold letters, "CONTRACT COMPLIANCE".

15 A. And the question, sorry?

16 Q. You would have understood, would you not, that contract
17 compliance would have to remain in full effect until
18 such time as progress towards remuneration and rostering
19 concerns had been met?

20 A. That's my interpretation of what's written there, yes.

21 Q. You were willing, as were the others, to support it
22 until such time as it was no longer needed; is that the
23 position?

24 A. I would support it until such time as something was
25 happening that I didn't agree with, and then I would of

1 course re-evaluate my support.

2 Q. Can I move on, please, to page 157. No doubt you will
3 have seen me ask a number of people about this when you
4 read the transcripts; an email from John Findlay, the
5 president, to others on the committee, referring to
6 a particular occasion when 87 officers were off sick on
7 one day and his understanding that this nearly caused
8 the integrated operations control to implode, and
9 adding:

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

11 Did you ever hear anything about targets of that
12 sort?

13 A. I can only read what's written there. I don't have any
14 recollection to -- obviously I wasn't privy to that
15 correspondence, and my only awareness of it is through
16 the transcripts and seeing it now.

17 Q. But were you aware that there were occasions when a very
18 large number of people were going sick on one day?

19 A. Not particularly, that I recall, no.

20 Q. Go to page 160, please. In the right-hand column:

21 "The focus discussions were another clear indication
22 that the membership want to apply further pressure in
23 the near future to encourage management to meet our
24 financial needs. In other words, we may have to cross
25 the boundary between simple contract compliance and

1 limited industrial action."

2 Can you help us with that? What was your
3 understanding, first of all, as to why there was a need
4 to add further pressure?

5 A. I think it's simply the fact that the union was trying
6 to get the Cathay management back to the negotiating
7 table. That wasn't happening, so they were trying to do
8 that by what they state in the newsletter.

9 Q. In particular, one of the things they are saying is:

10 "... we may have to cross the boundary between
11 simple contract compliance and limited industrial
12 action."

13 Can you help us as to your understanding about that?

14 A. Their words, not mine, my Lord. To me, "contract
15 compliance", "limited industrial action", they are just
16 words. They are umbrella terms that could mean any
17 number of things. So, without clarification, that's how
18 I would interpret them.

19 Q. But certainly one is a step up?

20 A. Possibly.

21 Q. That's what it says.

22 A. I would say contract compliance is a form of limited
23 industrial action.

24 Q. And what is being suggested is they may have to go one
25 step further --

1 A. That's how I would interpret this, yes.

2 Q. So turning the screws, one way or another, a bit more?

3 A. That's the way I would interpret this, yes.

4 Q. Go to page 164, please. Again, a number of reminders
5 about contract compliance being very much in force, and
6 reminding you all what to do and not to do, or what
7 you're not required to do:

8 "You are not required to be contactable outside of
9 reserve periods. Get caller ID, duplex ringing or
10 a spare line to assist you."

11 Did you do any of those things?

12 A. Which things?

13 Q. Get a caller ID, duplex ringing or a spare line to
14 assist you?

15 A. I didn't get a caller ID to specifically cater to this
16 need.

17 Q. Because you had one already?

18 A. I had caller ID, I had two phone lines, a fax line and
19 a normal telephone line.

20 Q. Further down:

21 "It is against the spirit of contract compliance to
22 offer to perform voluntary or discretionary duties."

23 Did you understand that to be the position?

24 A. I interpret that as what they're saying in these words,
25 yes.

1 Q. Could you help me with, just over the page at the top:
2 "C&T personnel would be in breach of the contract
3 compliance resolutions if they voluntarily worked on
4 a GDO. If an individual believes his own JFO or command
5 upgrade would be jeopardised if he did not work on
6 a GDO, we ask that you check with us on how best to
7 proceed."

8 Can you just help us with your understanding of this
9 particular aspect of it?

10 A. What understanding would you care for me to address?

11 Q. Just remind anyone who doesn't know what a JFO is.

12 A. It's a junior flight officer. Second officer is
13 probably a more accurate term.

14 HIS LORDSHIP: C&T? What is C&T personnel?

15 A. Check and training. That would be senior captains.

16 HIS LORDSHIP: Do you want any more assistance?

17 MR HUGGINS: I was thinking about it, my Lord, but I'm
18 conscious of the fact that I really do want to meet the
19 promise that I made and to try and cut out some of the
20 peripheral stuff.

21 Go, please, to page 174. Do you see, under "Salary
22 and Benefits", from time to time the union would give
23 good news and bad news, and there they are giving bad
24 news, that the salary negotiations are not going well.

25 Were you aware of that?

1 A. I would have read what's in the newsletter, most
2 probably, yes.

3 Q. So you would have regarded that as bad news too,
4 wouldn't you?

5 A. Pardon me?

6 Q. It says that's bad news. You wouldn't have said it was
7 good news, would you?

8 A. Well, if salary negotiations are not going well -- I can
9 only read what's written there.

10 Q. Yes, but how did you perceive that, as a good thing or
11 a bad thing?

12 A. Any negotiations that aren't going well I would perceive
13 as a bad thing.

14 Q. And something needed to be done about it?

15 A. Yes.

16 Q. There's then over in the right-hand column at the
17 bottom, under "SICKNESS":

18 "As predicted by your association many times since
19 1993, if a rostering system precludes effective rest and
20 recuperation then eventually pilots will become
21 increasingly unfit for duty. Currently, we have
22 sustained high sickness rates, including levels of three
23 times the industry norm."

24 Do you remember noticing yourself that there were
25 high levels of sickness?

1 A. I would have no way of ascertaining that.

2 HIS LORDSHIP: What about yourself personally?

3 A. Myself personally, my rate of being unfit for flights
4 did increase, yes.

5 MR HUGGINS: At least five of them on your reserve days?

6 A. I don't know that.

7 Q. Very well. Can we go, please, to pages 196 to 198,
8 which is a letter from the president on 16 May. This is
9 a letter in which Mr Demery was regretting having to
10 come to this point. He explains why and then says:

11 "We have called an EGM for the following purposes",
12 and then gives five purposes which you can probably read
13 to yourself so that I spare the shorthand writers for
14 a moment. Will you just do that and let me know when
15 you have finished.

16 A. I have read it.

17 Q. They were asking, in effect, in this letter, together
18 with the agenda and proxy, for your support, all the
19 members' support, for limited industrial action, with
20 the aim of increasing the pressure incrementally, and in
21 fairness to them, "only to the minimum amount required
22 to achieve reasonable objectives".

23 Did you understand what the purpose was?

24 A. That's what I interpret them saying there, yes.

25 Q. Did you give the support they requested by either

1 attending and voting or voting by proxy?

2 A. I wouldn't have attended that meeting because I was on
3 leave at the time. I would have submitted a proxy, but
4 I can't recall whether I did that in the form of
5 specifying which way I was going to vote or if I left --
6 I'm pretty sure I left it with someone to decide for me
7 how to vote, because on these meetings that were going
8 on there was a lot of discussion on the floor, and new
9 points or issues would be raised. So rather than
10 locking myself into a vote one way or the other,
11 I basically gave my proxy the freedom of assessing what
12 was going on at the time and voting on my behalf.

13 HIS LORDSHIP: Who was your proxy?

14 A. I honestly can't remember because I probably had more
15 than one at different times.

16 HIS LORDSHIP: Do you remember how your proxy in this
17 particular case voted?

18 A. No, I don't, my Lord.

19 MR HUGGINS: Forgive me for pressing a little bit on that,
20 because it might be thought strange, it's not for me to
21 say, that one would simply give a blank cheque to
22 somebody without either giving some indication as to how
23 you would like them to vote or at least some indication
24 as to your views, so that he would know how best to use
25 your discretion. Do you think that is a fair

1 observation?

2 A. That's a very fair observation. I would have chosen
3 someone who I had spoken with, discussed these things
4 with and had an idea of, you know, if he was thinking
5 the same way I was.

6 But in no way would -- he was still free to vote
7 which way he felt best, and at this particular time,
8 however he voted in this particular meeting would have
9 ended up having no consequence to me at all, because my
10 concern was in the result of the vote. Even if I voted
11 myself or sent in a specific proxy vote, I didn't go
12 back and say -- you know, analyse my vote. If the
13 motion was passed, be it by 51 per cent or 95 per cent,
14 that's the new direction, irrespective of how I voted.

15 So my concern was what's the outcome of the motion
16 and the vote. In this particular case, because I was on
17 leave, any outcome or consequence of this particular
18 vote was not going to affect me, because of my
19 dismissal.

20 HIS LORDSHIP: You didn't know about your dismissal at the
21 time.

22 A. I didn't, no.

23 HIS LORDSHIP: How were you thinking about the vote? You
24 gave a blank proxy or a blank ballot, shall we say, to
25 your proxy, but how were you thinking? Were you in

1 favour of the resolution?

2 A. I would have been in favour of the resolution, barring
3 anything unexpected that may have been raised at the
4 meeting.

5 HIS LORDSHIP: Right.

6 MR HUGGINS: The only way they are going to get support is
7 if people vote in favour of the resolution? That's
8 obvious, isn't it?

9 A. Of course. The union has to have solidarity, otherwise
10 it ...

11 Q. Right. So your expectation, at the very least, was that
12 he would vote in favour of this unless something really
13 dramatic caused him to think there ought to be a change
14 of heart?

15 A. That's a fair statement, yes.

16 Q. In any event, it's fair to say you didn't expect
17 an all-out strike because the resolution made it
18 perfectly clear, or the letter made it perfectly clear
19 that the committee had evaluated the options and
20 an all-out strike is not what was meant by limited
21 industrial action?

22 A. That's correct.

23 Q. So you knew it was going to be short of that?

24 A. I also knew that it was going to be something within the
25 confines of the law and the contract.

1 Q. Also, to be fair to you and the union, they were making
2 it perfectly plain that it was intended to cause, albeit
3 disruption, but as little disruption as possible. They
4 said so:

5 "We favour the use of incrementally increasing
6 pressure, thereby minimising disruption to our
7 travelling public, until we achieve our goals."

8 That was your understanding, was it not?

9 A. That's what I would interpret these words to say, but
10 I would not say what you just said, that that was their
11 intention. I don't know what their intentions were,
12 because I never discussed with the authors of these
13 writings what their intentions were.

14 I would interpret the words as you have, but I have
15 no way of knowing for sure what their intentions were.

16 Q. Forgive me, the intentions were to get the --

17 A. I don't know what their intentions were.

18 HIS LORDSHIP: He is saying he doesn't know what the
19 intention of the author is.

20 A. If all of this is propaganda then their intentions --

21 HIS LORDSHIP: He just read the words, and that's what the
22 words said. But this could just have been mentioned,
23 a lot of the time, as just a way of stepping up the
24 rhetoric --

25 A. Exactly.

1 HIS LORDSHIP: -- to bring the management to the negotiating
2 table, to deal with whatever grievances the members
3 have.

4 A. Thank you, my Lord, yes.

5 MR HUGGINS: Again, you would have expected the management
6 to see this sort of thing and think, "We don't know
7 what's coming"; that's part of the pressure, isn't it?

8 A. That's correct.

9 Q. So are you saying that actually after the vote was cast
10 you never spoke to your proxy again to find out how you
11 voted?

12 A. No, I did not.

13 Q. How can you be so sure about that when you can't even
14 remember who the proxy was?

15 A. Because that's my state of mind then and now. I tried
16 to explain, my Lord --

17 HIS LORDSHIP: You're just interested in the outcome?

18 A. The outcome. Once the outcome is there, how I voted or
19 my proxy voted is inconsequential.

20 MR HUGGINS: Can you just look at page 217, which would have
21 come out before you were on leave, I think, or not.
22 What do you say?

23 A. No. Actually, my last trip was on 15 June, so I would
24 have been operating from Hong Kong to LA on that day.

25 Q. But you will have seen this, surely?

1 A. Most likely, but I can't recall specifically.

2 Q. It would be somewhat odd and out of the normal course of
3 events for something of importance like this not to have
4 been seen?

5 A. That's why I've said that I most probably would have
6 seen this.

7 Q. Again, I suppose one of the features pointed out again
8 and again by your colleagues, and no doubt you would
9 agree, one of the features of this letter was that the
10 public were being told about the inconvenience that
11 would be caused by the limited industrial action, but
12 still no one is being told what form it would take; is
13 that the point you'd like to make as well?

14 A. Which paragraph are you referring to?

15 Q. The very first one:

16 "As professional aircrew of Hong Kong's flag
17 carrier, Cathay Pacific Airways, we regret sincerely the
18 need to take 'limited industrial action' and the
19 inconvenience this will cause to you, our passengers.
20 This motion will be voted on at an [EGM] on 20 June
21 2001."

22 A. And what's your question?

23 Q. So what comes out of that, you will have understood,
24 first of all, whatever form it takes, it's going to
25 cause inconvenience. That's inevitable, I suppose?

1 A. I don't know that it will cause inconvenience.

2 Q. You say because you don't know what form it takes?

3 HIS LORDSHIP: I think he is saying, once again, this is
4 rhetoric --

5 A. This is talk. These are words, not action.

6 MR HUGGINS: You are saying it doesn't much matter what form
7 it takes; the chances are any management looking at
8 that, it's going to put pressure on anyway?

9 A. Exactly.

10 Q. Okay. I press you any further on that, Mr van Keulen.

11 Going to pages 226 to 228, on the 29th. This point,
12 as I understand it, but you correct me if I am wrong,
13 for the first time there is an identification by the
14 union, at least officially, as to what form the limited
15 action was going to take?

16 A. That's correct.

17 Q. There wasn't anything else on a website before then
18 which you saw?

19 A. I don't recall.

20 Q. Because of course it was you who's referred to the
21 website in your statement, and I'm just trying to get
22 any kind of help at all as to when that would have been.

23 A. During the time that I was on leave from approximately
24 22 or 23 June, or this period, I would have been
25 possibly checking with the website maybe once a week to

1 see what was there. That's my recollection.

2 Q. In the light of the documents I began with about your
3 action in the United States in which you were the
4 1st plaintiff, thinking about it now, you really must
5 have seen something about it in some detail, to have
6 expressed the sort of views expressed on your behalf
7 about --

8 A. What was in that document was a submission by counsel,
9 and I was basically proceeding with that course of
10 action, under advice.

11 Q. I'm not for a moment going to ask you anything about
12 advice that you were given. That would not be a proper
13 question. But I wonder whether I might just ask you
14 what factual information you gave to your lawyers which
15 you think might or might not have led to that statement.

16 HIS LORDSHIP: That's the same thing. That's an inroad
17 into --

18 MR HUGGINS: My Lord, I will withdraw it immediately. Thank
19 you for that indication.

20 I am sorry, Mr van Keulen, to have asked anything.
21 His Lordship protected your interests immediately
22 and I apologise to you.

23 A. That's quite all right.

24 Q. I was not in any way intending to take advantage of you.
25 You have my assurance about that.

1 Can I just ask you about page 227 at the bottom.
2 There's a reference there to the fact that there's
3 an attached guidebook and a reference to normal
4 operations.

5 HIS LORDSHIP: That's at the bottom of page 227.

6 MR HUGGINS: The bottom of page 227. Perhaps I ought to
7 read it all to you:

8 "Attached to this introduction is a guidebook that
9 lists many factors of the operation that we may expedite
10 or abbreviate in normal operations and a few that are
11 not widely known. We remind you that operations are no
12 longer normal. Take time to learn the contents of this
13 handbook and follow its contents to the letter."

14 Did you not look at this and then look at the MSS?

15 A. I don't recall if I read this particular document.
16 I don't recall reading or getting a copy of the MSS
17 policy, if that's what you're referring to. So if you
18 can restate -- tell me again what your question is here,
19 I'll try my best to answer it.

20 Q. I was wondering if, having seen what was being said on
21 your behalf in America, perhaps I am making some wrong
22 assumptions, but I was going to suggest to you that you
23 might well have known rather more about the MSS than
24 your present recollection.

25 A. Again, MSS basically, in my mind, is a small part of my

1 recollection just because of the timing. I mean, when
2 it happened it became a nonissue --

3 HIS LORDSHIP: I think Mr Huggins' point is this: your
4 pleading, your claim form, in the Californian
5 proceedings actually quotes substantial passages from
6 the MSS document. Not this one, but the later document.
7 The one that describes MSS in detail.

8 A. Yes.

9 HIS LORDSHIP: The cut and paste from the aircrew guidebook.
10 So at some point someone must have read that and someone
11 must have given a copy to the lawyers. So he is
12 suggesting at some point you, because you were one of
13 the claimants, must have read the document.

14 A. To be honest with you, my Lord, I can't recall if I read
15 the document or not. I think your assessment is
16 correct, in that these documents were most likely
17 provided for our counsel in Los Angeles, and then they
18 took them on board and did what they thought --

19 HIS LORDSHIP: You are one of the claimants, so you must
20 have provided it.

21 A. Yes, but I don't have the records of our case there in
22 front of me. I don't know whether the MSS was included,
23 the full document was included in it or not.

24 HIS LORDSHIP: I think there's a reference there to the MSS
25 handbook being attached to the petition.

1 A. Okay.

2 HIS LORDSHIP: So that although quotations are included in
3 the claim form, the actual document I suspect was
4 attached.

5 A. It would have been attached.

6 HIS LORDSHIP: Exhibited, shall we say.

7 A. I can't honestly say whether I read it or not. Those
8 documents were fairly substantial.

9 HIS LORDSHIP: You just left it all to the lawyers; is that
10 the way it goes?

11 A. Not all, but yes, to a certain amount.

12 MR HUGGINS: Very well. On page 228, you at least knew,
13 didn't you, that one of the aspects of the MSS had
14 some -- might impinge upon the on-time performance, did
15 you not?

16 A. Sorry, your question for me is ...?

17 Q. Did you see any relationship between the MSS and on-time
18 performance?

19 A. As I'm trying to -- MSS was not in my mind at that time
20 at all, because it was a document that I hadn't seen.
21 I wasn't actually in a position where I needed to worry
22 about it until I got back from leave. So I wasn't going
23 to take time during my holidays with my kids to read
24 an MSS document that wasn't going to affect me for
25 another week, 10 days, until I got back to work. So

1 I can't really answer to what's written here or how
2 I felt about it.

3 Q. Let's do yourself justice, Mr van Keulen. If you go to
4 page 381 and to paragraph 5 in the preliminary statement
5 in America made on your behalf. In the same document as
6 is talking about the MSS, it does talk about, in
7 paragraph 5:

8 "The introduction of a new company policy called On
9 Time Performance ('OTP') which relates to schedule
10 regularity, marked a similar shift in focus away from
11 flight safety as the prime objective and in favour of
12 financial and commercial considerations."

13 Is that part of the case being put forward on your
14 behalf?

15 HIS LORDSHIP: It was part of the case. It is stated there.

16 MR HUGGINS: Sorry, my Lord, I always do it in a cumbersome
17 way. I could do it much more directly, but I like
18 a lead-in usually.

19 Was that your understanding that it was part of your
20 case, and was that something that you in effect told the
21 lawyers about? They don't know about this sort of thing
22 unless their clients tell them.

23 A. I can't say that I specifically told the lawyers about
24 this, but this would have been in the information
25 provided for them, that basically related the events

1 that we are discussing here. There would have been
2 materials made available to them from our legal team
3 here in Hong Kong, and that's probably where this came
4 from.

5 Q. It goes on in the next paragraph, again them speaking on
6 your behalf, as it were, I suggest:

7 "Cathay's pilots became increasingly concerned over
8 these, and other, issues and attempted to address their
9 concerns through negotiation with Cathay management.
10 These attempts were unsuccessful. Rather than address
11 the concerns of its pilots, Cathay's management made
12 things worse in order to further Cathay's financial
13 objectives."

14 Was this something you agreed with, you were putting
15 forward?

16 A. The first part of the statement I definitely agree with.
17 The last line, when it says "management made things
18 worse", there's not a clear indication of what "these
19 things" were, so it's kind of difficult to answer the
20 last part of your question there.

21 Q. Let's go over the page, paragraph 7:

22 "Crewing levels became increasingly inadequate to
23 undertake the proposed operations and day-to-day
24 rostering became unstable and chaotic."

25 A. I agree with that.

1 Q. Was this you speaking through your lawyers in this
2 regard?

3 A. I've made that statement myself, I believe, today.

4 Q. "This further increased the levels of disruption and
5 fatigue being experienced by Cathay pilots and aircrew."

6 Was that you speaking through your lawyers?

7 A. I would agree with that statement, yes.

8 Q. You were saying through your lawyers in America that it
9 was Cathay creating unsafe conditions?

10 A. That's a possible consequence.

11 Q. Forgive me, that's what you're saying, what's being said
12 on your behalf.

13 A. That's what the lawyers are saying, yes.

14 Q. "Yet, Cathay achieved at least part of its objective,
15 earning record profits in 2000 of approximately
16 \$650 million."

17 This was being said on your behalf and you were
18 agreeing with that, were you?

19 A. I can't attest to the accuracy of that.

20 Q. You see, what I am suggesting to you is the very fact
21 you were saying this sort of thing is indicative of just
22 how strongly you must have felt at that time and how
23 much you would have wanted to support your union in
24 putting a stop to this sort of thing.

25 A. I think, my Lord, I have indicated that I did support

1 the union.

2 Q. You have been a little, if I may say so, vague about the
3 vote in favour of the industrial action.

4 HIS LORDSHIP: I don't understand where is the vagueness.

5 MR HUGGINS: Your recollection now is, "Well, of course
6 I really don't remember whether I -- what the vote was
7 that was cast on my behalf. I never asked" --

8 HIS LORDSHIP: That isn't quite what he said, Mr Huggins.
9 He said that in the lead-up to the vote he favoured
10 limited industrial action, but as a precaution he gave
11 a blank proxy to a representative. He was at the end of
12 the day indifferent to how exactly the proxy voted
13 because what he's after is the end result. The end
14 result is all that affects him, however his proxy might
15 have voted.

16 A. Thank you, my Lord.

17 HIS LORDSHIP: I don't see anything vague there.

18 MR HUGGINS: Mr van Keulen, whenever I get helpful
19 indications like that from his Lordship, part of it is
20 a diplomatic way of saying, "Mr Huggins, get on with
21 it", so I'm going to do that. Thank you.

22 Can I go to another aspect now, Mr van Keulen.

23 A. Certainly.

24 Q. After you were dismissed, can you just tell us this: as
25 I understand it, there was an airline which gave

1 employment to several of your colleagues.

2 China Airlines offered jobs to Mr Fitz-Costa, Mr Shaw,
3 Mr Blakeney-Williams, Mr Gage, Mr Young, Mr Keene and
4 even Mr Carver was offered a job, but he declined it.
5 You got a job there too, did you not?

6 A. No, I did not get a job there. I did interview with
7 them.

8 Q. Ah. Forgive me. I had forgotten that. You were
9 invited for an interview. All those others got a job,
10 but you didn't?

11 A. That's correct, but the reason being was at the time of
12 my interview was in April 2003, I believe, and contract
13 airlines look at your recency of your licence,
14 basically, how recent it has been since you've flown
15 an aircraft. And different aviation jurisdictions have
16 different regulations as to what you need to do to
17 become current again.

18 In Taiwan, it was my understanding that if you
19 hadn't flown an aircraft for the previous two years,
20 then you had to do a full conversion course. If you
21 were inside the two years, the company could do a mini
22 refresher course on you and hire you.

23 China Airlines' position at the time was that by the
24 time they got around to considering me for employment,
25 I had surpassed that two-year limit and they weren't

1 interested in doing a full course for me, which would
2 have been an increased expense, when there are other
3 candidates that they could take on board through
4 a mini-induction.

5 Q. Can you help me with another thing, Mr van Keulen: after
6 you were dismissed, was there some period -- and you can
7 help me for how long if this is the position -- a period
8 in which you were in effect for whatever reason. I'm
9 not going to ask about lawyers, but for whatever reason
10 you felt, "Look, this is a purported termination. I'd
11 better not do anything which is going to jeopardize my
12 claim. I'd better not get a job just yet until
13 I finally accept that I have been terminated". Do you
14 understand what I'm saying?

15 A. I understand what you are saying.

16 Q. Were you in that category and, if so, for what period?

17 A. No, I wasn't. I took that notion on board, but my
18 feeling is that when you have -- when you're in
19 a situation where a number of people are being made
20 redundant at the same time, you don't want to be the
21 49th guy looking for a job when there's only 45 jobs, so
22 I thought it was prudent to start looking for other
23 employment immediately. That's borne out by my
24 statement, where I was interviewed with Korean Airlines
25 in August of 2001.

1 Q. As I understand from your statement, you're saying that
2 because you had not been flying, that's probably the
3 reason why you were not able to get a job with
4 China Airlines whereas your colleagues were; is that
5 what you are saying?

6 A. Yes, going back to China Airlines, that was my
7 understanding of the reason, yes.

8 Q. Did you ever apply to SIA Cargo, where one or other of
9 your colleagues in this case was offered a job?

10 A. Only as I stated in my statement, my Lord. I was made
11 aware by a friend of mine that was working for Singapore
12 Airlines at the time -- I can't distinguish whether it
13 was the passenger company or the cargo side -- I was
14 told that they were hiring, so with his help I sent in
15 my CV --

16 Q. Sorry, was hiring or not hiring?

17 HIS LORDSHIP: He was told that they were hiring.

18 A. I was told that they were hiring. So I submitted my CV,
19 which he hand-carried into management, and then as
20 a consequence of that, I was told -- I got an official
21 letter from SIA stating that they were not hiring, so my
22 application was not being -- would not be considered.

23 MR HUGGINS: Very well. Qatar?

24 A. No.

25 Q. Nippon Cargo Airline?

1 A. No.

2 Q. Orient Thai?

3 A. I considered Orient Thai and I explored that, yes.

4 Q. Sorry, did you make an application?

5 A. Yes, I did.

6 Q. Did you know that Mr Blakeney-Williams and Mr Gage were
7 offered jobs with them?

8 A. Not them specifically, but I knew that they were hiring,
9 yes.

10 Q. Was it around that time or you don't know?

11 A. I can't remember the time. I know that Thai Orient has
12 a reputation of hiring for a few months and then not
13 hiring for a few months. Their needs were almost
14 seasonal.

15 Q. Hong Kong Express Airways Limited, where Mr Fitz-Costa,
16 Mr Shaw and Mr Rogers got jobs?

17 A. No. I did apply to CR Airways, but not to Hong Kong
18 Express.

19 Q. Air Atlanta?

20 A. Yes, I did.

21 Q. Do you know whether this was before or after Mr Shaw,
22 Mr Carver, Mr Crofts and Mr Keene were offered jobs?

23 A. After.

24 Q. Virgin Blue?

25 A. Virgin Blue I believe is an Australian company. I don't

1 have the right to work in Australia.

2 Q. Easyjet?

3 A. A UK company. Same reason.

4 Q. Oasis, when it opened here?

5 A. I was already pursuing a new career in corporate
6 aviation at the time that Oasis was started up.

7 Q. Jade Cargo International?

8 A. No, sir.

9 Q. WAS Inc?

10 A. Yes, I did.

11 Q. Mr Neich-Buckley got a job and you didn't?

12 A. No. They required a green card and I didn't have
13 a green card.

14 Q. Air Freight Express, where Mr Crofts was offered a job?

15 A. No, not familiar with them.

16 Q. Astraeus Airlines, where Mr Crofts was also offered
17 a job?

18 A. Not familiar with them.

19 Q. There's a reference in one of the pleadings on your
20 behalf, but I don't think in a statement, to the fact
21 that you were employed by ACASS Canada?

22 A. That's correct.

23 Q. Can you fill us in on the details of that?

24 A. That was at the time where, my Lord, I realised I had
25 done a year of working on the ground for an engineering

1 company in Los Angeles and that came to an end
2 and I decided in my own mind that I wanted to and also
3 my expertise was in aviation and I needed to go back in
4 that direction. So with the assistance of a friend
5 I got pointed into considering corporate aviation.

6 So what I did was, at my own expense, with the help
7 of the union at the time, I undertook to do a type
8 rating on a corporate aircraft. Then the obstacle at
9 the end of my training was how do I get from a simulator
10 to the aeroplane. And ACASS Canada was basically
11 an aircrew, air management resource company, and they
12 had contracts to provide pilots for certain operators
13 around the world. So I joined up with them on
14 a one-year contract and then they took me and placed me
15 on their aircraft, for me to get experience and also
16 fulfil their requirements to provide pilots.

17 Q. In all that I missed a date. Was that in December 2004?

18 A. That's correct.

19 Q. I think that's pleaded, but now we've got it in
20 evidence.

21 A. Yes.

22 Q. That lasted, what, about a year, until the end of 2005?

23 A. Yes, that's correct.

24 HIS LORDSHIP: So you got your qualification, so to speak,
25 for working in ACASS Canada, and then you can go into

1 corporate flying?

2 A. Exactly that, my Lord. I left ACASS because I was
3 offered a full-time job in that business.

4 MR HUGGINS: So at the end of 2005, again your pleading
5 says, but so far your evidence doesn't say, that you
6 were employed by ACI Guam?

7 A. That's correct.

8 Q. How long did that last?

9 A. That lasted from December to January of 2006.

10 Q. Again, we have seen other things pleaded, but I'm not
11 sure -- I am sure you haven't said anything in your
12 evidence about it, that in March 2006, it's pleaded that
13 you were employed by Corporate Jets Incorporated?

14 A. That's correct.

15 Q. And how long did you work for them?

16 A. Until May 2007.

17 Q. Then again we need the evidence of what is pleaded on
18 your behalf, that in June 2007 you were then employed by
19 Dallah Albaraka Jeddah?

20 A. That is correct.

21 Q. Bring us up to date. Is that where you are employed
22 now?

23 A. No, I worked with them for six months, until
24 approximately October 2007, and then I took a position
25 with a private company in Vienna, Austria. I was with

1 them until May 2008, and then I was contracting for
2 three months until September of 2008. At that time,
3 I took a position with a private company in Mumbai,
4 India, and I'm still with them now.

5 HIS LORDSHIP: When you say "private company", it has to do
6 with aviation?

7 A. Yes, private companies that have their own aircraft,
8 either for the owner or for the corporate executives.

9 MR HUGGINS: Mr van Keulen, again I thank you, as I have
10 others, for your patience and understanding.

11 HIS LORDSHIP: Mr Grossman?

12 MR GROSSMAN: No re-examination, my Lord.

13 HIS LORDSHIP: Mr van Keulen, thank you very much for coming
14 to give evidence this morning.

15 MR GROSSMAN: That's my case.

16 HIS LORDSHIP: And Mr Huggins, I think that was your case as
17 well yesterday evening.

18 MR HUGGINS: Your Lordship is right.

19 HIS LORDSHIP: We will take a break now and then we will
20 resume at let's say -- I think I can be a little bit
21 more generous in view of the despatch. We will resume
22 at 12 o'clock. What I suggest we do, so we don't have
23 to wear wigs and gowns, I will adjourn it to chambers,
24 open to the public, and then we can have a case
25 management conference, just to see where we are going.