



EMPLOYMENT TRIBUNALS

Claimants:

Mrs A Hayes and Others

v

Respondent:

Qantas Cabin Crew (UK)
Limited

Heard at:

Reading

On: 7 to 11 and 14 & 15 August
2017

Before:

Employment Judge Gumbiti-Zimuto
Members: Mr A Scott and Mrs A Gibson

Appearances

For the Claimants: Mr A Allen (Counsel)

For the Respondent: Mr M Pilgerstorfer (Counsel)

RESERVED JUDGMENT

The claimants' complaint of sex discrimination is not well founded and is dismissed.

REASONS

1. The claimants are employed by Qantas Cabin Crew (UK) Limited as cabin crew. In a claim form presented on 18 October 2016, the claimants made a complaint alleging indirect sex discrimination contrary to section 19 of the Equality Act 2010. On 22 November 2016, the respondent filed a response in which it denied the claimants' complaints.
2. The claimants gave evidence in support of their case. The respondent relied on the evidence of Mrs Dannielle Morgan (Manager), Mr Richard Hampton (Service and Performance Manager) and Mrs Cassie Radford (Customer Experience Delivery Manager). All the witnesses provided statements which were taken as their evidence in chief. The Tribunal was provided with a trial bundle containing 809 pages of documents. We made the following findings of fact which we considered necessary to reach our decision in this case.
3. Qantas Airways Limited is a public company quoted on the Australian Stock Exchange operating the Qantas airline. Qantas Cabin Crew (UK) Limited, a company incorporated in England and Wales, is a wholly-owned subsidiary of Qantas Airways Limited. Qantas Cabin Crew (UK) Limited (the respondent) provides cabin crew to work on Qantas Airways Limited's

Qantas passenger flights departing from London Heathrow travelling to Dubai, Sydney and Melbourne.

4. At the time the respondent filed its response, it employed 395 employees as cabin crew of whom 321 were full-time cabin crew, 208 of whom were women, 113 were men, 74 were part-time cabin crew, of whom 62 are women and 12 are men. These figures had altered by the time the hearing took place when the respondent employed 468 cabin crew of whom 306 were women, 162 were men. Out of 78 part-time employees, 68 are women of whom 64 are parents, 10 are men of whom 3 are parents. Of the 390 full-time employees, 238 are women of whom 20 were parents, 152 are men of whom 14 were parents.
5. The respondent does not maintain a record of those employees who are parents. It is agreed by the parties that the numbers provided in respect of those employees who are parents may not be exact; the numbers provided are the best estimations that the parties have been able to arrive at.
6. In the period prior to April 2016, full-time cabin crew would be rostered to work in six eight-week roster periods in a year. The total flying time for full-time cabin crew is 900 hours a year. In any roster period full-time cabin crew could be required to work on or be placed on a standby rota. Part-time cabin crew would be provided with rosters which covered six eight-week periods. They would be required to do 50% of the working time. Part-time cabin crew were not required to work any standby roster.
7. Prior to the publication of a roster for a period, cabin crew could put in bids for particular working days. After the bidding period has closed the rosters that inform cabin crew when they are working are published. This takes place 10 days before the beginning of the roster period.
8. Cabin crew are able to make arrangements to swap shifts they were unable or unwilling to do. Swaps can be made by arrangement directly between crew. The respondent operated a website known as "Trip Swap" which also enables cabin crew to swap shifts. In this way, cabin crew can control the periods of time when they work.
9. This arrangement was of particular value to part-time cabin crew who, like the claimants in this case, had childcare responsibilities. It enables cabin crew to put childcare provisions in place for required periods of time. Where cabin crew were unable to put in place childcare facilities the ability to bid for leave and swap shifts meant that it was possible for cabin crew to work shifts that fitted with their own personal circumstances.
10. When a roster is published, part-time cabin crew like the claimants could find themselves on a roster to work a flight from London to Australia via Dubai. The London to Dubai flight was a three-day tour whereas the London to Australia was an eight-day tour.
11. When placed on the London to Australia rota, the part-time cabin crew could arrange to swap with someone who was on a London to Dubai

roster. The claimants found it easy to arrange a swap because the London to Australia trips were popular among cabin crew.

12. The uncontested evidence of the claimants is that when the respondent did not require them to work on standby rota, they were able to make arrangements that enabled childcare to fit around their work or alternatively were able to swap shifts to be able to meet their family obligations without any difficulty.
13. By 2014, the respondent experienced systemic problems in its operations from London caused by high sick leave and insufficient standby resources of both crew and managers. This put flights at risk and resulted in operational instability.
14. The respondent operates A380 aircraft from London Heathrow. These require a minimum complement of 18 cabin crew. Since 2014 a service level agreement requires the respondent to operate with a minimum cabin crew of 21.
15. A full complement of cabin crew on standby duty is required for each flight. In the six-month period from April to September 2014, 25 flights departed below the service level agreement required complement. The respondent could not achieve the required standby crew using only the full-time crew resources for standby.
16. When an employee is available for work, on any roster, a full-time employee cabin crew could be on a period of duty, on a rest period, on a standby duty, on a day off or a day of absence for any other reason. There are also what are known as "A days". An A day is a day when cabin crew is available for work that is not any one of the other type of days. The respondent considered that all trips preceded by an A day were unstable as the crew member could be called out on the A days.
17. The respondent found that full-time cabin crew received virtually no bidding satisfaction via Interbids¹, that is the full-time crew were unable to influence the way in which their rosters were built so as to allocate themselves time off using the Interbid software. The requirement for full-time cabin crew to be available on A days made the bidding obsolete.
18. Part-time cabin crew were at a significant advantage as they could influence their rosters at the building stage. Full-time cabin crew became upset because it had the effect of materially interfering with their lives. From early 2014 and continuing through to 2015 Cassie Radford received emails from full-time cabin crew expressing concern at how unstable their lives were becoming due to regular exposure to the standby roster. The principal concern was the operation of A days.
19. The respondent decided to commence a consultation to see how it could stabilise the rosters for the full-time cabin crew. The consultation was to

¹ Interbids is a platform operated by the respondent on which cabin crew could bid for flights.

operate through a working party with Cassie Radford as the management representative together with members of cabin crew to see how they could resolve the situation.

20. A number of cabin crew employees volunteered to participate in the process. The cabin crew representatives at the “seat at the table” were from among managers. There were no representatives of Flight Attendants or Business First Attendant levels.
21. The selected representatives for the “seat at the table” conference were invited to attend a meeting on 6 October 2014 for which they were asked to provide a one page email summarising issues they saw and a proposed solution.
22. Following the seat at the table workshop several issues were identified and initiatives were trialled.
23. In June 2015, the respondent introduced trip swap. This is a platform that allows cabin crew to swap rostered trips with other members of cabin crew. The respondent provided training for members of crew in order that they could use trip swap effectively.
24. In September 2015, the respondent proposed a dummy parallel roster be created running new rostering arrangements with a nine-day standby block in it.
25. On 30 October 2015, the On-Board Managers² (OBMs) were provided with the dummy parallel rosters for the bid period 306. The feedback from the OBMs indicated difficulties with A days as a problem. In December 2015, a proposal emerged that there should be a trial of the new way of running the rosters with all the cabin crew, both part-time and full-time, included in the allocation of standby duty, the aim being to clear away as many A days as possible as these were seen as the cause of the unstable rosters.
26. In January 2016, there was consultation with the union about the operation of a standby roster including part-time CSMs and a conference call to discuss the trial of standby arrangements for all part-time OBMs. It was confirmed that for the roster bid period 308 a full trial of the roster arrangements including part-time CSMs on standby was to be undertaken.
27. As part of what the respondent described as their consultation with the cabin crew, there were two crew voice calls. During a crew voice call Anna Hayes raised a number of points regarding the standby system to be implemented by the respondent before she was cut off. An issue of dispute arises between Anna Hayes and Cassie Radford concerning whether during the crew voice call Anna Hayes was deliberately cut off. On the evidence before us we have been unable to resolve this dispute. Anna Hayes is adamant she was cut off and has some support in her contention.

² Customer Service Managers (CSMs) and Customer Service Supervisors (CSSs) are collectively referred to as On-Board Managers (OBMs).

The respondent on the other hand was adamant that she was not cut off and suggested it was not possible to do so. We do not consider that resolving the issue is necessary for us to reach a decision in this case.

28. On 2 March 2016, a trial of standby duty to cover the wider cabin crew community would take place. This would be a standby pattern of five days.
29. The part-time Customer Service Supervisors (CSSs) were included in the for standby rosters for cabin crew was undertaken in the roster bid period 309.
30. On 17 May 2016, the claimants made a grievance alleging indirect discrimination. They were concerned that the changes made by the respondent to the standby roster would have the effect of bringing to an end their employment with the respondent. In the grievance, they said that the justification of fairness was disingenuous, subjective and deliberately divisive. They stated that as primary carers to dependent children, what the respondent was doing was putting them in a situation where they were being discriminated against. They claimed that the whole process of change to the new standby roster did not show the respondent in a favourable light.
31. The problems identified included the possibility of a standby roster blocks resulting in an eight-day trip to Australia. They asked for reassurance in relation to the ability to swap standby blocks. The main concern was the possibility of an Australia trip for eight days on two hours' notice. The grievants had children who were pre-school age and did not have childcare available on an ad hoc basis. They stated it was unreasonable to expect a primary carer to have childcare available for ten straight days on top of their usual scheduled childcare, just in case, for every standby roster block. On the trial period, they commented that the feedback obtained from a primary carer that had been reported as positive was not a fair representation; the manager who took part in the trial had older children of school age, had recently returned to full-time after being afforded flexible working part-time while their children were young, and the manager's financial and personal circumstances were not representative of all cabin crew parents.
32. Amongst the things that they asked to discuss were: the possibility of looking at the way that other airlines operated; a reassurance that Australia trips were not going to happen or a limit of when they can be available for call out for longer trips; the possibility of providing a longer call out time; the possibility of pre-filling standbys in order to help with forward planning of childcare; the possibility of operating a system where not all part-time cabin crew were required to work on standby; the possibility of a voluntary golden handshake payment.
33. On 3 June, Julianne Rogers, Danielle Morgan, Emma Lynch (a claimant), Anthony Lewis and Joe McGowan met to discuss the grievance.

34. On 23 June, the claimants all submitted flexible working applications. On 24 June, the claimants were provided with a response to the grievance.
35. In answering the grievance, it was pointed out that the maximum number of hours a part-time cabin crew can work is 120 hours per bid period. The usual rostered hours at the time of roster publications sitting between 100-115 hours per bid period. Receiving an Australia trip off a period of standby is unlikely. Factors increasing the likelihood of getting an Australia trip were, if the part-time crew member owes hours as a result of sick leave or is on a low hours due to trips dropped through the bid period, and if a crew member brings a trip forward to commence within eight days of their final day of standby. The respondent stated that the fair share rostering practices would only alter rostered hours for part-time crew marginally. It was expected that part-time crew would sit in the vicinity of 80-100 hours which would render the allocation of Australia trips off a standby unachievable. It was not possible in the roster-building process to accept any requests from cabin crew in relation to the structure or content of their roster. The company cannot build bespoke rostering practices isolating the claimant group as suggested. To do so would be in contradiction to the fair share rostering practices. The respondent needed to remain flexible and competitive in a highly competitive market.
36. Although the grievance had referred to indirect discrimination, there is no mention of indirect discrimination in the response given by Julianne Rogers. There is no analysis suggesting the concept was considered.
37. Danielle Morgan, the most senior HR person in Europe, stated that she did not give the indirect discrimination component of the grievance much thought. They had not discussed indirect discrimination. She did not take legal advice. She said she did not think of taking legal advice. She only took legal advice in relation to this matter when the employment tribunal proceedings started. She is now aware of what a 'PCP' is but she had not come across the concept in her role here in the UK at that time.
38. The claimants' flexible working applications were placed before Richard Hampton. Richard Hampton took the grievance raised by the claimants into account. His conclusion was that the flexible working applications were repeating matters which had been raised by the claimants in the grievance. His decision on the flexible working applications was to refuse the applications. In refusing them, he took the view that the matter had been raised previously by the claimants and a decision made. There was nothing new that arose from the flexible working application to justify a different outcome to the one which had been adopted by the respondent.
39. In the course of the evidence, Cassie Radford and Danielle Morgan both made reference to the union representative, Mr McGowan, saying to Julianne Rogers that the respondent was "good to go" on the standby arrangements. This was said to be a signal of union approval for the arrangements. This comment is not referred to in the witness statements of Danielle Morgan or Cassie Radford. Both however insist that the

comment was made. Cassie Radford gave a colourful description of Julianne Rogers shouting through the wall to her and reporting to her that she had just got off the telephone from Mr McGowan who had said that they were able to proceed with the standby procedure.

40. On instructions, Mr Allen for the claimants, put to Cassie Radford that there had been no such indication given to the respondent by Mr McGowan. The claimants produced a transcript of a text message indicating that the alleged conversation was denied by Mr McGowan. This part of the respondent's evidence therefore remains disputed. It is not contradicted by evidence from Mr McGowan. However, it does not appear in the witness statements presented as evidence in chief by the respondent's witnesses so could not have been countered by the claimants with evidence obtained before the hearing.
41. In respect of the bid period 311, commencing on 25 July 2016, the respondent placed all part-time cabin crew on standby duties. Part-time cabin crew were told they would be doing one standby duty every other roster. In contrast to full-time cabin crew who would have one standby each roster period.
42. The evidence that has been presented to the Tribunal shows that these predictions have not worked out as neatly as the respondent had predicted. The Tribunal heard that a number of claimants received standby duties in adjacent rosters, sometimes over three adjacent rosters. Danielle Morgan accepted during cross examination that the assertion in the grounds of resistance that in each year, there would "at most be three standby duties" was wrong. Anna Hayes and Carrie Barker had four in 12 months, another part-time cabin crew parent, has complained of having five standby duties in six rostered periods.
43. When on standby duties, claimants are required to be at Heathrow ready for duty within two hours of being informed that they have been allocated to a flight. They make arrangements to ensure that in standby periods they are available to be on duty within two hours. One claimant lives in Belgium, others live in the north east and north west of England, and in Scotland.
44. Section 19 of the Equality Act 2010 provides that: A person (**A**) discriminates against another (**B**) if **A** applies to **B** a provision, criterion or practice which is discriminatory in relation to a relevant protected characteristic of **B**'s. A provision, criterion or practice is discriminatory in relation to a relevant protected characteristic of **B**'s if: **A** applies, or would apply, it to persons with whom **B** does not share the characteristic; it puts, or would put, persons with whom **B** shares the characteristic at a particular disadvantage when compared with persons with whom **B** does not share it; it puts, or would put, **B** at that disadvantage; and **A** cannot show it to be a proportionate means of achieving a legitimate aim.
45. The parties provided us with written submission which we have taken into account in arriving at our decision in this case.

Conclusions

46. The provision criterion or practice in this case is that all crew work standby. The pool for comparison is all cabin crew. Does the PCP put women at a “particular disadvantage”? The claimants must show that women are at particular disadvantage when compared with men. Some evidence of disadvantage to women is required.
47. We note that section 136 of the Equality Act 2010 provides that if there are facts from which the court could decide, in the absence of any other explanation, that a person (A) contravened the provision concerned, the court must hold that the contravention occurred.”
48. What is a disadvantage? The “EHRC Statutory Code of Practise: Employment” says that: “‘Disadvantage’ is not defined by the Act. It could include denial of an opportunity or choice, deterrence, rejection or exclusion. The courts have found that ‘detriment’, a similar concept, is something that a reasonable person would complain about – so an unjustified sense of grievance would not qualify. A disadvantage does not have to be quantifiable and the worker does not have to experience actual loss (economic or otherwise). It is enough that the worker can reasonably say that they would have preferred to be treated differently.”
49. The claimants’ closing submissions stated that: “It is accepted that the burden of showing Group Particular Disadvantage lies with the claimants. There is no reason for the claimants to provide the reason for their disadvantage. This is primarily set out in the witness evidence of the lead claimant Anna Hayes, which the other claimants have adopted.”
50. Anna Hayes’s evidence includes the following: “the full-time staff are able to fit in with standby duties, we say that the reason for this is that they have full-time child care arrangements already in place, which part-time staff do not tend to, because we simply don’t earn enough for full-time childcare to be worthwhile³... The issue lies with us not being able to have standby days allocated to us which occur on the days of the childcare we pay for, and the resulting potential need to arrange childcare within two hours’ notice for up to 10 days, which is simply not possible for most of us. If we paid for 10 days’ childcare every standby block (that’s if it was even available) then we would be paying out in childcare fees more than we earn⁴... Generally speaking, I believe (as do the other claimants) that women with childcare commitments (and who tend to be primary care givers of their children) will be disadvantaged by a requirement to take a trip with short notice of the destination, and therefore, the duration of the trip.⁵”
51. The evidence before us is that women who are part-time cabin crew with child care commitments, because they have no permanent childcare,

³ Paragraph 9 Anna Hayes Witness statement.

⁴ Paragraph 10c Anna Hayes Witness statement.

⁵ Paragraph 20 Anna Hayes Witness statement.

suffer disadvantage on standby because of the need to take trips at short notice. The claimants' case is that the disadvantage "falls into two broad related categories: (a) there is insufficient time to organise child-care; and (b) the cost of 'just in case' child care (if it could be organised) would be disproportionate and prohibitively expensive."

52. Having identified the group disadvantage relied on we are required to perform a comparison with men. The evidence relied on by the claimants is summarised in the claimants' closing submissions at paragraph 21 and from that the propositions set out in paragraph 22 and 26 are relied to reach the conclusion that women suffer a particular disadvantage in comparison to men.
53. We are satisfied that there is evidence from which we could conclude that women are primary carers for children. The evidence before us about the respondent's staff shows that women are more likely to be parents than men. There is in our view some evidence from which we could conclude that women suffer a particular disadvantage in comparison with men when it comes to working on standby.
54. The respondent contends that the evidence is incomplete and that it in fact is not possible to make a meaningful comparison between men and women. It is said that the claimants have failed to show that the women suffer a particular disadvantage. The respondent states that it is not possible to assume disadvantage simply from parental status. We take this into account but remind ourselves that the claimants have to prove the case on balance of probabilities and that it is the evidence that has been presented that we should consider.
55. This evidence in our view shows that the respondent employs 468 cabin crew of whom about 17% are part-time and 83% are full-time. Of the 468, 65% are women and 35% are men. Of the part-time cabin crew, we know that 82% of the women are parents and that 3.8% of the men are parents. The evidence about the male disadvantage arising from working standby rota has not been presented save that it has been shown that it may exist in some specific instances. In this case the absence of this evidence about the men does not undermine the evidence that has been provided.
56. We are satisfied that on the information before us we can conclude that on a balance of probability women have a particular disadvantage arising from the PCP when compared to men.
57. The burden of showing individual particular disadvantage lies with the claimants. The claimants contend that the requirement to do standby is practically and economically unsustainable for them. Three of the claimants have resigned their employment.
58. The claimant contends that there are problems to them arising from the various solutions which the respondent has advanced as ways in which the difficulties that they face about standby can be met.

59. The respondent contends that the claimants must show that each was put at a disadvantage. The respondent contends that there was no suggestion in the proceedings that the assignment by the respondent of the claimants to fixed duties was detrimental or disadvantageous. The respondent says that similarly, the requirement that the claimants be rostered for standby duties did not on the evidence before the Tribunal involve them being subjected to a material or substantial detriment or disadvantage.
60. It is also said by the respondent that the evidence did not show a single instance of the claimants not able to undertake the duty when it arose on a standby day. The respondent says that the agreed evidence of the claimants showed that those of the claimants that were rostered to perform standby duties performed those duties in the same way as all other duties where they were able to do so and where difficulties were experienced, a solution was found. The respondent says the claimants have failed to establish that there was a disadvantage.
61. The Tribunal is satisfied that the claimants have been able to show that they have suffered a disadvantage. It is clear from the evidence that all of the claimants have had difficulties in relation to the standby duty. The standby duty is an obligation on the claimants. The claimants are professionals who want to be able to do the work that they are obliged to do and it is disadvantageous to put them in a position in which they are made to feel that they are not complying with those obligations because their obligations to their children do not permit such compliance.
62. The respondent contends that the final step in the analysis is to consider whether the respondent has a justification of the PCP. It must be a proportionate means of achieving a legitimate aim. It is for the respondent to prove this.
63. The respondent is engaged in a highly competitive market. There are 32 airline carriers operating to Australia. The premium long-haul sector is highly competitive. To compete in that environment the respondent must provide premium service to customers by having a full complement of highly trained cabin crew. The respondent must have at least a full A320 trained crew on standby. The respondent contends that it is entirely legitimate to seek to share these duties evenly between cabin crew employees. There is a fair share principle set out in the collective agreement the respondent has with Unite.
64. The respondent states that it is legitimate to seek to share standby evenly where roster instability has resulted when full-timers only have been working standby. Stability in the roster gives all cabin crew a reasonable degree of certainty as to their working hours and achieves harmony throughout the body of the cabin crew. The respondent operates this system in order to achieve operational efficiency and to ensure that all employees undertake a fair share of the cabin crew duties.

65. It is not disputed by the claimants that these are legitimate aims. What the claimants dispute is that the respondent has produced sufficient evidence to demonstrate that these aims are being met in a proportionate manner by extending the requirement to work standby to the part-time cabin crew. It is the question of proportionality that is in issue not the legitimacy of the respondent's aim.
66. The respondent states that proportionality should be considered in the light of: the fact that standby duties were modest in extent and frequency; the fact that the respondent provides the claimants with the Interbids system to help them influence where in their rosters a period of standby would appear; the respondent permitted the claimants on an unlimited basis to swap standby duties where they could find a swap partner ; the fact that the claimant's main concern of being rostered to fly to Australia has very low likelihood; the fact that the evidence shows that in the event they have in fact been able to do 12 out of 20 standby blocks during which they themselves were not ill or otherwise unavailable; where the claimants could not undertake standby duties because of childcare reasons, in every case the respondent agreed with the claimant a solution which removed the requirement to undertake a difficult duty for the claimant; taking a flexible approach to the strict terms of the carers leave policy is an example of the proportionality of the application of the PCP.
67. The respondent counters each of the alternative proposals that the claimants suggested in the course of the grievance process and in the course of the hearing. In each instance the respondent gives cogent reason why for the respondent they not an acceptable position. It is for the respondent to consider the alternatives in the light of its assessment of the needs of the business.
68. The final position adopted by the claimants was that they be excluded from standby duties with the option of giving them additional fixed duties. The respondent has given cogent explanation for why this was not viable for the respondent. Including the problems this presents for the computerised rostering process; the problem with manual adjustment of the rosters; the impact on other staff.
69. We accept that on balance the respondent's introduction of the standby systems was a proportionate means of achieving a legitimate aim. In arriving at this conclusion, we have taken into account a number of factors where we consider that the respondent has been lacking.
70. The respondent was seeking to rely on an evolving interpretation of their policies and practices. These policies as they were evolving was not always articulated in a clear way to the claimants so as they could understand fully what was open to them.
71. Danielle Morgan was being relied upon by the respondent for human resources advice. It was clear from the evidence that she gave that she had no understanding of how indirect discrimination on the grounds of sex

could arise from treating everyone in the same way and that there was no real understanding of the distinction between consultation and simply keeping people informed.

72. The claimants made grievance complaints. In the course of the grievance meeting, Danielle Morgan took no notes. There was supposed to be an independent review. There is no evidence which has been presented to the Tribunal to show how this independent review was carried on or what conclusions it arrived at. The description of it as an independent review may in any event be a misnomer as it was a review which was carried out by the respondent's HR department in Australia.
73. The claimants' flexible working requests were not considered by Mr Hampton at all. He rubber-stamped the decisions previously made at the grievance stage. He conducted no analysis. He did not weigh up the potential impact on the claimants' current regime continuing against the potential impact on the respondent or other employees of the claimants returning to set duties that did not include standby.
74. We note the criticism that the respondent has not produced an analysis as to the positive impact cabin crew of part-time cabin crew being required to work standby where there have been a number of new initiatives relating to rostering put in place by the respondent since 2014 and the total number of cabin crew has substantially increased. While there has been no attempt made to isolate the effect of the extension of the requirement to do standby duties to part-time staff from these other factors, the extension is part of the whole package of measures that has produced stability to the rosters.
75. The respondent put forward a variety of arrangements to ameliorate the effects of standby duties on part-time cabin crew. The ability to bid for leave; the ability to arrange swaps including the ability to swap standby duties; the claimants could use the trip swap website; the claimants could take unpaid leave; the claimants could take annual leave; and the claimants could take carer's leave.
76. We reject the notion put forward by the respondent to take sick leave is relevant in considering the question of proportionality in relation to standby and consider that the ability to take annual leave is of limited significance in considering the question.
77. We recognise the claimant's criticisms that when the claimants take leave without pay they incur a penalty in relation to remuneration. However, it does allow them to forgo a duty that they would otherwise have to perform to the prejudice of childcare responsibilities. We agree that Carer's Leave is designed for parents to take leave when they have children or others in their care who are themselves sick. We note that although Carer's Leave is specifically excluded as covering situations where simple childcare is required by the employee. The respondent has not applied this strictly. We also note that the respondent's policies and procedures were not

formally changed to reflect this new approach. While taking carer's leave would not have allowed in the relevant circumstances it is now recognised by the respondent as part of their armoury to fight against the adverse impact of standby on part-time cabin crew. The respondent's witnesses have said in the course of evidence that the respondent would allow employees to take carer's leave in circumstances where they could not comply with standby requirements for childcare reasons. This new policy is in action and has occurred on occasions with some of the claimants and other employees.

78. The respondent introduced the new standby rosters after an imperfect process of consultation and after failing to engage fully with the claimant's contentions that they suffered indirect discrimination. However, the respondent has been attentive to the practical issues raised by the claimants and has modified its own policies to accommodate the claimants needs. There was a balance to be struck by the respondent involving stabilising the rosters, fair allocation of standby rosters and the impact placing part-timers on the roster has on the part-time cabin crew. On balance we are of the view that the respondent has been able to show that the new standby roster was proportionate means of achieving its legitimate aims of achieving roster stability.
79. The claimant's claim of indirect discrimination is not well founded and is dismissed.
80. A separate judgment will be sent to the parties dealing with the respondent's application for costs.

Employment Judge Gumbiti-Zimuto

Date:3 October 2017.....

Sent to the parties on:

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For the Tribunals Office