

New South Wales Industrial Relations Commission



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Cork and Australasian Correctional Management Pty Ltd [2003] NSWIRComm 1056 (7 October 2003)

Last Updated: 1 December 2003

INDUSTRIAL RELATIONS COMMISSION OF NEW SOUTH WALES

Coram: TABBAA, C.
07 October, 2003

Matter No. IRC 7420 of 2001

ROBERT LEO CORK and AUSTRALASIAN CORRECTIONAL MANAGEMENT PTY. LTD.

Application by R.L. Cork re unfair dismissal pursuant to [section 84](#) of the [Industrial Relations Act 1996](#)

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DECISION

The Applicant filed a claim under [Section 84](#) of the [Industrial Relations Act, 1996](#) on 14 November, 2001 alleging that he had been unfairly dismissed by the Respondent on 09 October, 2001. Mr. Cork contended that he had been employed from 11 April, 1992 until his dismissal as a National Escort Manager. Conciliation attempts during two conferences failed to settle the claim and ultimately a filing schedule was directed and the matter was heard on 03 to 06 June, 2002 inclusive.

Mr. P. Rochfort, Agent, entered an appearance on behalf of the Applicant and called evidence from:
Robert Leo Cork Applicant
Grant Andrew Cummins Ex-employee

Ms N. Rudland, Solicitor, entered an appearance with Mr. Hollings on behalf of the Respondent and called evidence from:

Mr. Alan Stephen Hollings National Operations Manager, Detention Services
Mr. Peter Anthony Barnsley Detention Officer
Mr. Malae Sailiai Detention Officer
Mr. Keith James Fyfe Registered Nurse
Ms Debra Jane Diplock Executive General Manager-Human Resources
Mr. Gerry MacCormack General Manager, Detention Services
Mr. Richard James Laws Manager Investigations

BACKGROUND

The primary business of Australasian Correctional Management Pty. Ltd. (hereinafter referred to as "ACM") was the provision of privately owned and operated correctional institutions and immigration reception and detention centres all over Australia. In accordance with the terms of the contract between ACM and the Commonwealth, detention services included providing escort services during the repatriation of detainees to their countries of origin.

A high security covert repatriation operation took place between 26 - 31 August, 2001. It involved taking 31 high profile and at high risk of escape and/or self-harm detainees and/or other unauthorised non-citizens

(all of which were non-voluntary repatriations) to various Asian and European destinations. Only senior DIMIA officials and ACM staff were aware of the operation.

Mr. Cork had occupied ten different positions with ACM during his period of 9.5 years' service. Two years previously he had been transferred from Perth to Sydney under the title of Escort Administrator and in or about July 2001, he had been promoted to the position of National Escorts Manager. According to his evidence, the position description was exactly the same with the only change being a move from the Villawood Detention Centre to head office.

Reporting directly to him were two accountants and the supervisor of transport and escort at Villawood. In addition, there were other people who reported to him across Australia in relation to escorts conducted from those facilities. His duties primarily involved responsibility for gathering all the information and documentation relating to any escorts throughout Australia and invoicing the Department of Immigration and Multicultural and Indigenous Affairs (DIMIA). His duties did not include the selection of the staff to undertake the escort.

It was conceded that he did not have an unblemished work history. He had received warnings in 1992, 1996 and in 1999.

He had been involved in an overseas "removal" in the late 1990s. As a team leader or second in charge, he had conducted a removal of a group of Chinese from one facility to one destination, being China. A removal occurred when the federal government determined that a person had no right to remain in Australia and must be repatriated to their country of origin.

He was also second in charge of the removal in "*Operation Long Haul*" (the Operation). That involved the forced removal, under guard and under restraint, of 32 detainees from various Immigration Detention Centres (IDCs) and Immigration Reception and Processing Centres (IRPCs) to their various countries of origin. Handcuffs and restraining belts had been utilised.

Mr. Cork commenced duty at 6 am at Villawood IDC from where the Operation commenced on Sunday, 26 August, 2001. The staff involved in both the escort and the preparation of the detainees for repatriation had been required to be on duty at 6 am to take detainees to the property store and conduct a property acquittal on each of them in preparation for their removal. They proceeded to Richmond Air Base (NSW) where they met up with other detainees and staff brought from Maribyrnong by charter flight, and from Queensland by domestic flight. They boarded a Malaysian Airways charter flight which departed at approximately 11.10 am AEST with 12 detainees, 27 escort staff and 4 DIMIA representatives on board bound for Port Hedland via Alice Springs to refuel and to pick up more staff and detainees from Curtin and Port Hedland Detention Centres.

A further 21 detainees and 6 escort staff joined the flight when it departed from Port Hedland at 5.30 pm on the same day. All in all, there had been 34 ACM staff (which included the medical team of 3), 4 DIMIA staff and 32 detainees.

There had been seven drops of detainees made - the bulk to countries such as Kuala Lumpur, Dubai, Damascus, and Istanbul. On arrival at each location, designated detainees were removed from the plane and released from the care and control of the Respondent. Upon arrival at Kuala Lumpur at 10 pm on the same day, 8 detainees and 5 staff disembarked for those detainees to be removed to their country of origin.

Approximately 6 hours' later, the flight arrived at Dubai where 1 detainee and 1 staff disembarked with the officer to return to the aircraft on the return trip. The aircraft flew on to Damascus arriving approximately 2.5 hours later and remaining for about 1 hour. At that point 13 detainees had been removed. All passengers disembarked upon their arrival at Istanbul late in the afternoon approximately 2 hours later. Four officers were required to remain at the Airport to supervise the remaining detainees who were awaiting a flight to Belgrade.

The applicant and Mr. Cummins were amongst the personnel who were taken to a pre-arranged hotel in the City. They were on downtime and were not required to meet until they gathered at 7 am the following morning for the return trip to the airport.

On route to Dubai where the aircraft was to refuel for the return journey, a bird flew into the engine cowling of the aircraft causing some damage. The pilot decided to continue the flight and upon inspection of the damage to the aircraft in Dubai, a decision was made to resume the return journey the following day on a charter flight. There was a great deal of consultation with local officials in relation to the restraint and other equipment carried on the aircraft. There was confusion as to the role of the senior Managers in those discussions.

They had all travelled together from Dubai to Kuala Lumpur where they spent another night. They separated and caught different commercial flights back to their various Australian destinations. Mr. Cummins left early on the morning of 30 October to return to Perth. Mr. Hollings and Mr. Cork left KL on the evening of the 30th and arrived in Sydney on the morning of the 31st. Other staff caught planes to Melbourne and Brisbane.

Overall, in terms of the successful repatriation of those detainees, the Operation had been a success. However, Mr. Cork had been concerned about the manner in which the Commander of the Operation, Mr. Cummins, had dealt with a number of issues which had arisen during the trip. It was contended that sleep deprivation, heat exhaustion and other stress factors described below had led to words being exchanged between the two Managers resulting in Mr. Cork being assaulted whilst on the tarmac at Dubai airport. They had later resolved their differences and returned to Australia in amicable terms.

Mr. Hollings was an officer under instruction from Mr. Cummins although he was higher in rank to him and was responsible to Mr. MacCormack. The purpose of his inclusion on the Operation was to experience and learn so that he would be capable of commanding a similar operation in the future. He had not been referred to in the grouping. As a result of a report by Mr. Hollings, an investigation was conducted which led to the suspension of the Applicant and the ultimate dismissal of both Managers. The applicant had appealed that decision internally but had been unsuccessful.

It was contended on behalf of the Applicant that, despite the prima facie fairness of the Respondent's processes, the termination had no basis in fairness and the intervention of the Commission was being sought for the following reasons:

1. The determination by the Respondent that his behaviour constituted extreme insubordination was unjustified;
2. His behaviour towards his commanding officer at Dubai Airport did not justify summary dismissal;
3. He had not been provided with proper training and/or instruction in relation to his role on the Operation;
4. The investigation into the incident was flawed and/or afforded no due process to the Applicant;
5. The disciplinary hearing conducted into his conduct was lacking in procedural fairness and/or natural justice; and
6. The appeal hearing conducted by the Respondent was flawed and afforded no procedural fairness and/or natural justice to the applicant.

The applicant was seeking reinstatement when associated payment of remuneration lost between the time of the dismissal and the time of reinstatement. In the alternative, the applicant was seeking a remedy of compensation equivalent to six months' pay.

It was contended on behalf of the Respondent that the dismissal was clearly the result of the behaviour of the applicant at Dubai International Airport when he spoke to the officer-in-charge of the operation, Mr. Grant Cummins, in a confrontational and insubordinate manner provoking in the latter retaliating in an inappropriate manner by assaulting him. His behaviour had been in breach of his obligations under the Respondent's code of conduct and the grievance and disciplinary procedures, the provisions of both of which he was very familiar with. Although, ultimately, the incident had no detrimental effect on either the Respondent or DIMIA, the potential risk to the Respondent, other officers and DIMIA was serious bearing

in mind the attention already attracted from the foreign local authorities because of the restraint equipment in their possession.

The investigation which had commenced into Mr. Cummins' behaviour was properly expanded to include an investigation into the applicant's behaviour when it became apparent that his behaviour warranted questioning. The Respondent could not afford to ignore breaches to its lines of control and lines of command. He had been afforded procedural fairness in the conduct of both the internal disciplinary and appeal processes which ultimately determined that his behaviour had constituted extreme insubordination and justified summary dismissal. It was submitted that the dismissal was not harsh, unjust or unreasonable.

ORGANISATION OF THE REMOVAL

Mr. Cork

stated that he became aware of "Operation Long Haul" some three or four weeks prior to its commencement as there had been a preliminary meeting with representatives from DIMIA to discuss the fact that overseas destinations were refusing to accept those detainees. It was the first multi-country repatriation operation conducted by ACM. He probably became aware that he was to be second-in-charge of the Operation at that time. As part of his duties he was asked to prepare an Operational Order (on which he described himself as Escort Team Leader) and to coordinate the movements of staff and detainees within Australia as they were being drawn from all over the country. ACM had no role to play in the coordination and liaison with the countries of origin. That was the responsibility of DIMIA.

Mr. Cork testified that he had been advised approximately a week prior to the commencement of the operation that Mr. Grant Cummins, an employee with 9 years' service, would be the Operation Escort Commander. Mr. Cummins had not been involved in the selection of either the staff or his second-in-command, Mr. Cork.

The Operational Order included, in part, that he was responsible for the coordination of relief arrangements for staff during the escort. He ensured that the staff were relieved from their escort duties to have meals and, if possible, to have a break from their normal duties by moving to the business class section on the aircraft. Mr. Cork testified that he also had the opportunity to have a rest period but he preferred not to as he considered that he had responsibilities for the security and safety of all on board. His role was also to collect the time sheets from each staff member and the per diem claims prior to the conclusion of the escort so that the escort could be billed out to DIMIA in a timely manner. Despite all of that, he testified that he had not been given a brief as to what his responsibilities were or any training in relation to conducting that operation.

He had also allocated tasks in that operational order to Mr. Grant Cummins and other Officers and to the medical team. Mr. Cork stated that, in allocating tasks, he had liaised with a number of other ACM personnel to determine who should have responsibility for what tasks based on previous removals they had been involved in. During that exchange with his colleagues, he had gained knowledge of what was required for different positions on the operation. DIMIA representatives were responsible for the majority of the time frames within the Operational Order as there were on-going negotiations as to which detainees were going to be on the Operation. It had remained a "*living document*" for approximately a week prior to their departure and he had been contacted daily about its revision.

There was another meeting in relation to the Operation between representatives of ACM and DIMIA on 16 August at Villawood to establish where the detainees and staff were coming from and how they were going to connect with the charter flight.

Mr. Cummins testified that he had attended that briefing which had concluded around lunchtime. He had suggested to Mr. Cork that they meet to discuss and organise plans for the trip. Mr. Cork had refused because he was booked on the 1 pm to Melbourne where he was spending the weekend. He agreed that Mr. Cork had responded with words to the effect that there was nothing in it for him. **He had been disappointed because he had been directed to undertake the escort against his wishes and he had flown from Derby to Sydney, approximately 14 hours, and driven 2.5 or 3 hours to sort things out**

and yet everyone else had made plans for their weekend and left after the meeting. He agreed that he had complained about Mr. Cork's attitude to Mr. Hollings prior to the operation commencing to the effect that, "*This is crap. I'm here to do something and no-one is here to do anything with.*" **Mr. Cork** could not recall Mr. Cummins suggesting that they get together to sort out issues involved in the Operation. Neither could he recall telling Mr. Cummins that he was going to Melbourne for the weekend and leaving at 1 pm although he obviously must have told him. He pointed out that his trip to Melbourne had been approved by the General Manager. He would not deny but he could not recall telling him that he did not get paid enough to do that. In any event, he thought that it was too early in the process to bother with meetings.

Mr. Cork agreed that on the eve of their departure from Australia, Mr. Cummins had held a meeting at Villawood in which he had participated. Following that meeting, Mr. Cummins had conducted a rehearsal of certain procedures for the operation during which the use of restraints was demonstrated and that was all he was aware of. He recalled being sent by Mr. Hollings on a retrieval mission to Darwin as an observer to re-acquaint himself with factors applying to remote operations. As National Escorts Manager, his role was to develop, and maintain the Escorts Manual which contained processes and policies on that issue such as obtaining security clearances to move detainees by air, creating a job number, invoicing a job and the responsibilities of different people on escorts. ACM contracts through DIMIA to provide the services to the Commonwealth. He was aware that there were aspects of the contract whereby financial penalties may be imposed on ACM in certain circumstances. He was also aware that there were sensitivities involved as an ACM staff member when dealing with DIMIA representatives and that there have been times when ACM staff have believed that DIMIA officials have taken an unfriendly view on the ACM staff's behaviour. He understood that embarrassing situations can have complications for ACM in its dealings as a company with DIMIA. He knew that as an officer of ACM, while in the company of DIMIA officials, that he needed to behave professionally and in accordance with the code of conduct. He had been second in command during the overseas removal mission to China. It had been a long time ago and procedures and responsibilities had altered since that time. They had only been on the tarmac for half an hour. He had not had any interaction with Chinese officials although he was in their presence and was aware that when dealing with foreign officials he had to behave in a professional manner and things could get tricky and that was why DIMIA officials accompanied them on the trip. He was aware of that when he went on Operation Long Haul .

Mr. Cummins described the operation as "*a mess from the start to the end; a complete mess*". **They did not know how many detainees they were removing or their final destinations until just prior to the plane taking off. They had a Queen's Counsel on hand in case there were late applications filed to remain in Australia. On the aircraft, some detainees had been handcuffed and others were restrained in their seats depending on their level of risk.** The detainees and their escorts were seated in what would normally be classed as the economy section of the plane. Seated in what would normally be business class were Messrs. Hollings, Cummins, Cork and DIMIA officials and other staff who used that part of the aircraft for meal breaks and rest periods. It was originally intended that Mr. Hollings, National Operations Manager, Detention Services, would remain in Australia and Mr. Cummins would report to him upon his return, however, he had accompanied them as an observer.

Mr. Hollings testified that he had seen Mr. Cork on a number of occasions seated in his seat. On some of those occasions he was working on the lap-top computer and on at least one of those occasions he was sitting with his eyes closed but could not tell whether he was asleep or not.

Mr. Cummins agreed that, despite it being Mr. Cork's role, he had taken an active role in the organisation of meal breaks and the security of detainees during such periods because he "*thought things could be done better, yes...*". **Approximately 95 per cent of the detainees were considered to be extreme high risk people. There were a number of Palestinian detainees who were considered high/medium high risk. There were a couple of low risk people on the plane such as one lady and two young children. Depending on the degree of the risk, some officers were assigned two detainees and other detainees had four (4) officers each assigned to them. The DIMIA representatives had not played an active role in the actual handling of the detainees.** They were on the operation to liaise with local officials and to participate in the decision-making process on pertinent issues. In his opinion, the whole trip had been poorly organised for a number of reasons. Firstly, there had been poor communication which left everyone confused. Secondly, there had not been any training provided. Staff, the majority of whom had never been

involved in an escort project, had not been briefed until they left Port Hedland and were heading towards Kuala Lumpur. Thirdly, the equipment was wrong. He had been required to take the equipment despite his protestations and no preparation had been made for its suitable carriage. He had to go shopping and buy a suitcase the day before the trip as there was nothing provided to carry it in. Fourthly, upon his return to Australia, no arrangements had been made for his, and his staff's, accommodation or flight back to Western Australia.

DIFFICULTIES ENCOUNTERED DURING THE REMOVAL

Some difficulties had been encountered at the commencement of the operation.

Firstly, Ansett Airlines had been experiencing industrial action and therefore it had not been possible to load their bags in a set sequence in order to eliminate problems with dropping various persons off along the way. **At every landing point, they had to sort through the luggage to retrieve individual's bags because their belongings were mainly packed in green garbage bags with a number written on them identifying their owner.**

Secondly, a security problem arose when it was discovered, when the flight left Alice Springs, that the **Palestinians at Port Hedland had received prior notice that they were going to be removed to Damascus, Syria.** The latter had caused Mr. Cummins a great deal of concern as he could recall a similar occasion when death threats had been received by staff at Curtin in June 2001. **Mr. Alan Stephen Hollings** held the position of National Operations Manager, Detention Services, for ACM. He tendered an affidavit, as amended, in the proceedings (Exhibit R1). He commenced his position with ACM in December 2000 and prior to that he had been an officer in the Australian Army for nearly 25 years. Prior to entering the Australian Army, he had worked for a period of about eight months as a Store Manager with Kentucky Fried Chicken, Victoria. He confirmed that he had been on Operation Long Haul principally to observe the operation with a view to ascertaining how such operations were conducted. It had been a year since a similar operation had been conducted and therefore, at that point, he had been unfamiliar with the process. Notwithstanding that he did not have any operational role on the flight, he had considered himself to be on duty and had participated in operational matters. He testified that the leak had caused him some concern.

Thirdly, the seating arrangements on the flight over had caused dissension between Mr. Cummins and Mr. Cork. **Mr. Cork** testified that many days of planning had gone into gathering information in relation to the type of risk the detainees posed - be it self-harm or security risk. A seating plan for both detainees and escort staff had been developed strategically for security reasons. He had been concerned to find, when he boarded the flight, that the seating arrangements had not been complied with by Mr. Cummins and, in his view, had the potential to jeopardise the operation as he considered it dangerous to alter the planned arrangements. That seating remained unchanged until they arrived at Port Hedland at which time additional staff and detainees were taken on board and the seating arrangements had been rectified. He further testified that he had raised his objections to the change with Mr. Cummins on the plane. He had logged the incident in his running sheet but could not recall raising it with Mr. Hollings. He admitted, during cross-examination, that he had not filled in an incident report about the matter nor raised it during the debrief session on the plane. He further admitted that Mr. Cummins had actually devised the seating plan although there had been input sought from him.

Fourthly, the forced rehydration of a detainee whilst on the plane had caused further dissension between the Commander and the 2IC of the Operation. During the trip, **Dr. Ghergori** had become concerned about a detainee who was refusing to eat or drink and had examined him and continued to monitor the situation. Options, such as the use of force, rehydration without the consent of the detainee on the ground or in the air, the method of rehydrating and the force-feeding of the detainee were discussed in detail by Dr. Ghergori, the nurse, Messrs. Cummins and Cork and DIMIA staff. Mr. Cummins and the Doctor were at odds as to the most viable option. According to Mr. Cork, Mr. Cummins had stated several times during that conversation that he would prefer to force-feed the detainee water orally as rehydrating him on the ground would involve having to restrain him and force an IV into his arm. The Doctor recommended against force-feeding him preferring, at an appropriate time, to use the IV method. Mr. Cork further stated that at that point in time, Mr.

Cummins had removed himself from the discussions, which were continuing, and made his way to the back of the plane where that detainee was seated. He thought that Mr. Cummins was attempting to convince him to take a drink. However, when he heard that detainee yell out "stop", he had turned around to find Mr. Cummins holding the detainee by the head and forcing a cup to his mouth. The Doctor had attended to that detainee and advised him later that he had a bleeding gum but was not seriously injured. He testified that during the discussion, he had agreed with the medical staff reminding Mr. Cummins that operational staff normally followed medical opinion but he had not been able to talk to Mr. Cummins privately prior to him force-feeding the detainee. After the event he had spoken to Mr. Cummins again advising that he did not think it was a smart move and indicating that they ought to have followed medical advice. During cross-examination, he stated that he regarded the force-feeding of the detainee inflight as a breach of duty of care as he understood it. He could not recall whether he had raised the issue with Mr. Hollings and was not in a position to dispute the evidence if Mr. Hollings claimed that he did not. However, he was sure he would have included it as a report on his running sheet. He had not prepared an incident report about that issue nor raised it during the debrief session on the plane. **Mr. Cummins confirmed that there had been a number of discussions with different people in relation to one of the detainees who was refusing to take fluids. He agreed that he had a different point of view to the doctor. He wanted to try and encourage the man to drink fluids whilst the doctor took the view that was force-feeding and that that was inappropriate and considered that it more appropriate to put in an intravenous line. To do so, he would have to be chemically sedated and they had been told by the highest possible source from the Government that it was not to occur.** He had actually encouraged the man to drink some fluids and once encouraged, he had drunk three or four cups by himself. He agreed that, almost from their first meeting, there was a difference of opinion between him and the doctor on a number of matters. The staff and the security of the aircraft were his responsibility and she refused to listen to him and the concerns he had. He reluctantly agreed that Mr. Cork said to him something along the lines of, "*The doctor really believes we should rehydrate the person,*" and after the man had actually taken the three or four cups of water, he said to him something along the lines of, "*The doctor doesn't think that was right,*" or "*That wasn't a smart move. The doctor wasn't happy with that.*" In his view, Mr. Cork had sided with the doctor and, unlike him, was not looking at it from an operational perspective. He did not regard Mr. Cork as addressing him inappropriately on that occasion. **Mr. Fyfe stated that control had been a big issue during the operation given that the staff had been drawn from different centres and were operating in a foreign, confined and often tense environment. They were undertaking an extraction which meant that the environment was potentially dangerous. The hydration of detainees ought to have been totally under the medical team's control and direction but that was not what had eventuated. Although the Doctor had commented to him, "Well, the final outcome has been achieved, hasn't it?" she clearly had not been happy about it and was actually taken aback by the actions of Mr. Cummins.**

Mr. Hollings testified that he had observed the doctor enter the business class area of the aircraft and speak to three (3) DIMIA officials about her concerns regarding the forced rehydration of the detainee by Mr. Cummins. He had not overheard any concerns being expressed by the DIMIA officials. **Mr. Peter Anthony Barnsley** tendered an affidavit in the proceedings (Exhibit R2). He had been employed as a detention officer with ACM at the Maribyrnong immigration detention centre, Melbourne and was involved on general detention/escort duties on Operation Long Haul. He had been seated in the aisle seat just past the centre, towards the rear of the aircraft with two detainees sitting closest to the window in his care. He had witnessed the detainee being rehydrated. **He had been responsible for that detainee during the trip from Maribyrnong to Sydney as that was where he had originated from. That detainee was still cuffed from the time he boarded the aircraft. The nurse had pointed out that he required fluids or he was in danger of his kidneys shutting down. He saw Grant Cummins more or less hold the detainee's jaw open and forcibly tip one glass of water into his mouth.** That had not caused him any concern. Mr. Cork had made an allegation of an incorrect procedure relating to making a passenger take fluid during a disciplinary hearing held into his conduct. **Mr. MacCormack** stated, during cross-examination, that it had not been investigated because it was merely an allegation, the reason being that the person who was subjected to being rehydrated was out of the country and the episode was closed. He agreed that the relevant procedures had not been complied with.

Fifthly, at Damascus, the officials took the pilot and the co-pilot away from the aircraft for about 1.5 - 2 hours while they were left at the end of the runway with lots of vehicles around them. Consequently, the plane's arrival time at Istanbul had been delayed.

Sixthly, the aircraft landed at Istanbul at about 1.10 pm local time (20.10 AEST) on 27 August, 2003, thirty-three (33) hours after departing Richmond. At that time, there were only five detainees remaining for repatriation. **One was to depart on a flight to Moldova later that evening and the others were due to depart the following morning local time to cities including Glasgow, Belgrade and Ho Chi Minh.** During one of the DIMIA briefings, ACM had been led to believe that arrangements had been made with the local authorities for holding cells to be made available for securing those detainees overnight in Istanbul which would have allowed for rotation of staff. However, in Istanbul, they had experienced communication problems between the Australian and Turkish authorities and ACM staff were advised by DIMIA that the holding cells were no longer available and that the four remaining detainees would be held in a lounge at the airport. That caused some confusion. Although the roster had already been drawn up, the Turkish authorities would not allow shift changes. So while staff were standing down the aisle of the aircraft waiting to disembark, Mr. Cummins testified that he had to pick a system similar to drawing the short straw to select two female and two male staff to remain on static duty for the duration of their stay in Istanbul. He agreed that he had said to the internal appeal panel:

"The relief of static post was not allowed by the authorities in Istanbul. I had to select staff which was not in my role or responsibilities in the operation. However, Cork failed to do that, so I selected staff."

The assignment had basically finished for the remaining staff, including himself and Mr. Cork, at Istanbul. It took a considerable period of time before they were allowed to go through Customs and finally transported by bus to a Hotel in Istanbul. Upon their arrival, he and Mr. Cork had ensured that staff had been allocated rooms and keys and were aware of where and when they had to assemble in the morning for the bus ride back to the Airport. He shared a room with Mr. Hollings. They went up, he had a shower, changed out of his uniform and, with Mr. Hollings, went downstairs where he saw Mr. Cork at the bar near the foyer area. They stayed for about 45 - 60 minutes and then they went for a walk around the block and bought something to eat. He had not seen Mr. Cork after he left the bar area until the following morning. Personally, he had not had any sleep prior to arriving at Istanbul and, as far as he was aware, Mr. Cork had been in a similar position. He had about four hours' sleep that night. Mr. Cork confirmed that he had not had any sleep from the time they left Australia until arrival at Istanbul. He was able to relax there and enjoy a drink or two but estimated that he had only six (6) hours' sleep there despite being afforded 13 hours down time from the time of his arrival at the hotel until 7 am the following day. Staff paraded again for duty at the airport at approximately 7 am local time 28 August, 2001. Mr. Cummins explained that when he chased up Mr. Cork and the doctor at breakfast because they were running late and the bus was waiting to take them to Istanbul airport, the doctor started spruiking and saying, *"Oh, he was naked outside my room last night. Didn't you know that?"* in the presence of Mr. Cork. He admitted that he had concerns about the relationship between Mr. Cork and the doctor on the trip and was critical of the fact that Mr. Cork had not distanced himself from the doctor. The aircraft departed for Dubai at about 10.10 am. Mr. Hollings stated that, with the exception of the staff on static duty, they had departed the Airport for the Istanbul hotel at approximately 4.00 pm local time and between the hours of approximately 6 pm local time on 27 August and 7 am local time on 28 August had an opportunity to sleep and rest generally. By the time the plane left Istanbul for the return journey to Australia, there were no detainees in custody. Mr. Fyfe confirmed that most operation staff were in civilian clothes. He felt qualified to express the opinion that *"Mr. Cummins and the operation staff were extremely fatigued at the time their duties in Istanbul were completed. However, by the time they departed Istanbul, most of the operation staff, although still tired, seemed more refreshed due to the overnight stay."*

Seventhly, when the plane took off from Istanbul on 28 August, 2001, they had all gathered at the back of the aircraft for an operational debrief en route to Dubai. A bird flew into the engine cowling of the aircraft causing some damage. Upon being briefed by the Captain, Mr. Cummins briefed the staff. There was downtime because there were no more detainees and the staff could unwind. Mr. Fyfe gave evidence that alcoholic drinks were available on the charter aircraft after the plane departed Istanbul for the first time during the operation. He categorically stated that no one appeared to be indulging excessively in the