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**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

20 DON ADDINGTON, *et al.*;
21 Plaintiffs,
22 v.
23 US AIRLINE PILOTS ASSOCIATION
24 and US AIRWAYS, INC.,
25 Defendants.

Case No. 2:08-cv-01633-PHX-NVW

**OPPOSITION TO PLAINTIFFS'
SUPPLEMENTAL APPLICATION
REQUESTING EMERGENCY
PRELIMINARY INJUNCTION HEARING
BY OR BEFORE OCTOBER 1, 2008**

26 Plaintiffs, pilots employed by defendant US Airways, Inc. ("US Airways" or the
27 "Company"), seek a preliminary injunction prohibiting the Company from implementing a
28 furlough that was initially announced on June 12, 2008, to be effective on October 1, 2008.

1 Plaintiffs' claim against the Company is based on an alleged violation of the collective bargaining
2 agreement between the Company and the plaintiffs' union, defendant US Airline Pilots
3 Association ("USAPA"). While plaintiffs concede that the Company has a right to implement a
4 furlough, they contend that the collective bargaining agreement requires the Company to furlough
5 other pilots before it furloughs plaintiffs. As US Airways will demonstrate in its Opposition to
6 the Application for Preliminary Injunction (currently scheduled to be filed by October 6, 2008)
7 and in its forthcoming Motion to Dismiss (currently scheduled to be filed by September 29,
8 2008), a preliminary injunction in this matter is not appropriate because the federal courts do not
9 have jurisdiction over plaintiffs' breach of contract claims against the Company, and because
10 plaintiffs' claims are without merit.

11 Plaintiffs now have filed a Supplement to Plaintiff's Application for Preliminary
12 Injunction [doc. 19], claiming that there is an "urgent need" for a hearing on their Application for
13 Preliminary Injunction to be scheduled on or before October 1, 2008. Plaintiffs' belated request
14 to have an expedited hearing must be denied because it is not supported by the equities nor by the
15 plaintiffs' prior course of action in this matter. There is absolutely no need to deprive the
16 Company of an orderly process for responding to the Application.

17 Accordingly, US Airways respectfully requests that its complete response to the
18 Application for Preliminary Injunction be due in accordance with the applicable Rules of Civil
19 Procedure on October 6, 2008 (which is ten (10) days after service and mailing time) and that
20 plaintiffs' Reply, if any, be due within the time period set forth in the applicable Rules of Civil
21 Procedure. US Airways requests that the Court schedule any hearing on this matter within a
22 reasonable time that allows for adequate preparation.

23 **I. Plaintiffs Have Not Shown Any Need For An Expedited Hearing.**

24 Plaintiffs argue that if an injunction issues after October 1, 2008, the West Pilots will be
25 harmed because their careers will be disrupted. (Supp. App. at 2-3.) That is plainly not true.
26 Pilots' careers -- and their finances -- would be completely unaffected by a furlough that is
27 reversed by injunction (or more appropriately, by an order of the arbitration Board of Adjustment
28

1 that has exclusive jurisdiction over breach of collective bargaining agreement claims), regardless
2 of when such an injunction issues.

3 All that plaintiffs have demonstrated by their Supplemental filing is that the West Pilots to
4 be furloughed on October 1, 2008 will suffer no imminent economic harm as a result of the
5 furloughs. As plaintiffs concede, West Pilots furloughed on October 1, 2008 will receive
6 furlough pay and benefits equal to their regular pay and benefits until at least early December
7 2008. In addition, those furloughed West Pilots will continue to receive their next regular
8 paychecks for work already performed, and will receive accrued vacation in a lump sum within
9 thirty (30) calendar days of the furlough.

10 Moreover, if an injunction is issued following implementation of the furlough, the
11 injunction can order that those pilots furloughed will retain their seniority, and can require a
12 return to the pre-furlough status quo. The injunction can also implement a back-pay remedy, if
13 applicable, and require that those pilots who remain in active service pending the furlough will
14 similarly be replaced into the same relative seniority positions they were in pre-furlough.¹

15 Furthermore, irreparable harm is not presumed and is seldom found from the mere loss of
16 a job. Loss of a job may be remedied by money damages if the employee ultimately prevails.
17 *See Sampson v. Murray*, 415 U.S. 61, 90 (1974) (“It seems clear that the temporary loss of
18 income, ultimately to be recovered does not usually constitute irreparable injury.”). That is the
19 case here.

20 **II. Plaintiffs’ Course Of Conduct Belies Their “Urgent Need” For An Expedited**
21 **Hearing.**

22 On or about June 12, 2008, the plaintiffs became aware of the number of impending pilot
23 furloughs when the Company notified each of its pilots that the Company intended to furlough a
24 total of 300 pilots, including 175 “West Pilots” and 125 “East Pilots,” who would be furloughed
25 under the separate East and West seniority lists pursuant to their respective collective bargaining

26
27 ¹ Plaintiffs’ attempts to balance the hardships that would be suffered by East Pilots and US Airways if an
28 injunction is not issued before October 1, 2008 also fail to demonstrate any need for an expedited hearing. As
plaintiffs’ papers make clear, both East Pilots and US Airways would suffer hardships as a result of an injunction,
regardless of when one issues.

1 agreements.²

2 On September 4, 2008, plaintiffs filed their Verified Complaint [doc 1] in this action,
3 seeking injunctive relief and money damages related, in part, to a pilot furlough US Airways has
4 scheduled to commence on October 1, 2008. Two weeks later, on September 18, 2008, plaintiffs
5 filed an Application for Preliminary Injunction [doc. 12] in which, as this Court recognized, they
6 failed to “state the facts and circumstances from which urgency of a need for preliminary
7 injunction can be determined.” [doc. 16]

8 On September 23, 2008 -- only seven days before the October 1, 2008 furloughs are to be
9 implemented -- plaintiffs filed a Supplement to the Application for Preliminary Injunction in
10 which they now assert, for the first time, that they have an “urgent need to have the Court hear
11 and decide this Application before October 1, 2008.” (Supp. App. at 1.) This assertion is not
12 credible. If plaintiffs truly believed that such an expedited hearing were warranted, they would
13 not have waited until now to request such a hearing.

14 Moreover, plaintiffs should not be permitted to benefit from their own delay by making a
15 last-minute demand for an emergency hearing that would require US Airways to prepare
16 responsive pleadings and prepare for a hearing on minimal notice. *Cf. Lydo Enterprises v. City of*
17 *Las Vegas*, 745 F.2d 1211, 1213 (9th Cir. 1984) (“[a] delay in seeking a preliminary injunction is
18 a factor to be considered in weighing the propriety of relief”); *Friends of the Clearwater v.*
19 *McAllister*, 214 F. Supp. 2d 1083, 1086 (D. Mont. 2002) (“A preliminary injunction is sought
20 upon the theory that there is an urgent need for speedy action to protect the plaintiff’s rights. By
21 sleeping on its rights a plaintiff demonstrates the lack of need for speedy action”) (citing *Lydo*
22 *Enterprises*, 745 F.2d at 1213) (internal citations omitted); *Gianni Cereda Fabrics, Inc. v. Bazaar*
23 *Fabrics, Inc.*, 335 F. Supp. 278, 280 (S.D.N.Y. 1971) (holding “that the equities lie against
24 plaintiff because of the delay in instituting the suit and bringing on the motion. Delays in seeking
25

26 ² US Airways is currently in a period of “Separate Operations” pursuant to the terms of its collectively-
27 bargained Transition Agreement entered with its pilots at the time US Airways merged with America West Airlines,
28 Inc. (“America West”). Under the Transition Agreement, Separate Operations requires that pilots on the pre-merger
America West seniority list continue to fly on America West aircraft under the terms of the America West collective
bargaining agreement, and pilots on the pre-merger US Airways seniority list continue to fly on US Airways aircraft
under the terms of the US Airways collective bargaining agreement. (*See* Compl. Ex. B, at §§ II.A. and II.B.4.)

1 preliminary injunctions have been held grounds for barring that relief"); *Gillette Co. v. Ed.*
2 *Pinaud, Inc.*, 178 F. Supp. 618, 622 (S.D.N.Y. 1959) ("while laches may not be sufficient to bar a
3 permanent injunction it may well be a bar to preliminary relief [since] [a] preliminary injunction
4 is sought upon the theory that there is an urgent need for speedy action to protect the plaintiff's
5 rights").

6 CONCLUSION

7 For the foregoing reasons, US Airways respectfully requests that the Court deny the
8 plaintiffs' request for expedited treatment of its Application for Preliminary Injunction, and
9 instead order that:

- 10 • US Airways' response to the Application for Preliminary Injunction be due on
11 October 6, 2008;
- 12 • Plaintiffs' Reply, if any, be due within the time period set forth in the Local
13 Rules;
- 14 • Any hearing on this matter be scheduled within a reasonable time.

15 RESPECTFULLY SUBMITTED this 24th day of September 2008.

16 US AIRWAYS, INC.

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CERTIFICATE OF SERVICE

I hereby certify that on September 24, 2008, I caused the foregoing document to be filed with the U.S. District Court for the District of Arizona Clerk's by hand-delivery.

I further certify that on September 24, 2008, I caused the foregoing document be served by electronic and U.S. Mail on the following:

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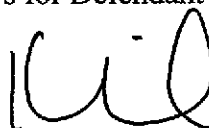
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