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

9 DON ADDINGTON, *et al.*,

10 Plaintiffs,

11 vs.

12 US AIRLINE PILOTS ASSOCIATION,  
13 and US AIRWAYS, INC.,

14 Defendants.

CASE NO. 2:08-CV-1633-NVW

**PLAINTIFFS' RESPONSE TO**

***DEFENDANT US AIRWAYS"  
NOVEMBER 1, 2008,  
SUBMISSION OF CASES.***

15 Plaintiffs respond to Defendant US Airways' November 1, 2008, submission  
16 of cases on "whether a court should take into account events occurring after the  
17 filing of a complaint in determining whether to dismiss a claim." The cases  
18 submitted by US Airways are off point because they address what a court takes into  
19 account when fashioning a remedy not when determining jurisdiction.

20 The court in *Stanton v. Delta Air Lines, Inc.*, 669 F.2d 833 (1st Cir. 1982),  
21 found a breach of DFR, and, "while retaining jurisdiction . . . , ordered the matter  
22 returned to the arbitration panel for consideration of the merits of the grievance."  
23 669 F.2d at 835. *See Izzo v. AT&T Communications, Inc.*, 1987 WL 26102, 4, n.1  
24 (N.D.Ill.,1987) (explaining that *Stanton* ordered arbitration "only after it had been  
25 found that the union had breached its duty of fair representation"). *Stanton* is akin  
26 to *Bernard v. Air Line Pilots Assn., Intl.*, 873 F.2d 213, 215 (9th Cir. 1989), where  
27 the seniority dispute was negotiated after the court remedied the DFR violation.  
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1 **CERTIFICATE OF SERVICE**

2 I hereby certify that on November 11, 2008, I electronically transmitted the  
3 foregoing document to the U.S. District Court Clerk's Office by using the CM/ECF  
4 System for filing and transmittal of a Notice of Electronic Filing.

5 *s/ Andrew S. Jacob*  
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