

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23

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

US Airways, Inc., a Delaware Corporation,

Plaintiff,

vs.

Don Addington, an individual, *et al*

and

US Airline Pilots Association,

Defendants.

a

Case No. 2:10-CV-01570-PHX-ROS

**DECLARATION OF  
NICHOLAS PAUL GRANATH**

I, Nicholas Paul Granath, Esq., declare as follows:

1. I make this Declaration of my own free will and based on my personal, first-hand knowledge, unless otherwise specifically indicated. I am counsel of record for the US Airline Pilots Association (“USAPA”) in the above cited matter, and in all related litigation.

2. This Declaration is in support of USAPA’s motion to dismiss the Company’s Complaint.

3. Attached, marked, and labeled Attachment A is a true and correct copy of a the decision of the System Board of Adjustment in the matter of Transition Agreement dispute No. 9 (furloughs), May 8, 2009.

1 Pursuant to 29 U.S.C. § 1746, I declare under penalty of perjury that the foregoing  
2 is true and correct.

3 Executed on: November 1, 2010

4 */s/ Nicholas Paul Granath*

5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23

Exhibit A

In the Matter of the Arbitration Between

---

US Airways, Inc.

and

Transition Agreement  
Dispute No. 9

US Airline Pilots Association

---

Hearings Held January 8, 2009  
Before Richard I. Bloch, Esq., Chairman  
System Board of Adjustment

Appearances:

For the Company:

Robert A. Siegel, Esq.  
Rachel S. Janger, Esq.

For the Association:

Theresa Murphy, Esq.

OPINION

Facts

Section II of the 2005 Transition Agreement between US Airways and the US Airline Pilots Association (“USAPA”)<sup>1</sup> deals with operation of the pilot workforces of America West and US Airways following their merger and during the “Period of Separate Operations” – the time prior to Operational Pilot Integration<sup>2</sup> of the two groups. Section II.B. speaks to, among other things, placement of “new” pilots – those hired during the time the two companies are operating separately:

...7. America West may hire new pilots if all pilots on the US Airways seniority list have been offered recall to US Airways or have been offered a pilot position at America West. New pilots hired during the Separate Operations will be placed by

---

<sup>1</sup> USAPA is the successor labor organization to ALPA in this bargaining relationship.

<sup>2</sup> See § VI.A. of the Transition Agreement.

their date of hire on a third seniority list entitled “New Hire Seniority List,” will be junior to all pilots on the pilot seniority lists of America West and US Airways on the effective date of this Letter of Agreement, and will continue to be junior to those pilots on the integrated seniority list of America West and US Airways pilots.<sup>3</sup>

The dispute in this case arises from furloughs that began in 2008. During that summer, the Company instituted certain scheduling changes<sup>4</sup> that reduced block hours on both the East (US Airways) and the West (America West) systems (hereinafter shorthanded, from time-to-time, as “East” and “West”). At about the same time, the Company reduced both existing and expected fleet sizes in both systems, and mandatory pilot retirement age was raised from 60 to 65. These, and other changes, contributed to US Airways’ decision to furlough pilots in both the East and West. Ultimately, the Company saw the need to furlough 150 pilots from the West workforce and 93 East pilots.<sup>5</sup>

Central to the dispute is the language in the above-quoted provision referring to placement of new-hire pilots on a “third” seniority list – the “New Hire Seniority List.” No such list exists. In practice, pilots hired after the merger of the two companies have been offered positions in either the West or the East System, and those individuals are placed at the bottom of the respective seniority lists by date of hire. Significant to the complaint before the Board, furloughs have been implemented separately, with pilots furloughed according to their relative seniority on their respective East or West lists.<sup>6</sup>

---

<sup>3</sup> Transition Agreement, § II.B.7., *infra*, p. 6.

<sup>4</sup> It reduced its night flying out of Las Vegas, for example.

<sup>5</sup> Co. Ex. 3.

<sup>6</sup> In July of 2008, US Airways announced some 300 pilots would be furloughed by April of 2008; 175 were to come from the West, and 125 from the East. These totals were later reduced as a result of voluntary

Because the Company is reducing more flying, thus more pilots, in the West, than in the East, certain pre-merger West pilots are being furloughed while some junior new-hires in the East System have remained on the job.<sup>7</sup> That fact is at the heart of this grievance. USAPA says the furloughs are contrary to the terms of Section II: By its reading, all new-hire pilots should have been assigned to a third seniority list, with *all* pilots on that list furloughed ahead of *any* pre-merger pilots from either the West or East Systems.

Issue

Did the Company violate the Collective Bargaining Agreement by failing to furlough all new hires before turning to pre-merger pilots?

USAPA Position

The Association claims the language of the Transition Agreement is clear: The Company's obligation was, and is, to establish a third seniority list, populate it with new hires, according to their date-of-hire, then furlough solely by reference to that third list before furloughing any pre-merger pilot, who, by definition, would be the more senior.

Company arguments to the contrary, says the Association, are cost driven, based on claims of operational impracticality. But these contentions cannot be used to override the clear mandates of the bargained agreement. As remedy, the Association requests this Board to immediately order the Company to cease and desist furloughing any pilots from either the America West or US Airways systems seniority list until all pilots listed by date-of-hire order on the "New-Hire Seniority List" have been

---

leaves, among other things. According to the record, 57 West pilots were furloughed October 1, 2008. Of that group 14 were new hires and 43 were pre-merger pilots. A month later, 53 pre-merger West pilots were furloughed with an additional five furloughed June 1, 2009. Un. Ex. 2, p. 4, Un. Ex. 4, p. 3.

<sup>7</sup> See Tr., 120. See also, Un. Ex. 2, p. 7, Un. Ex. 4, p. 3, Co. Ex. 3.

furloughed. Additionally, USAPA requests a make whole remedy for any pilot adversely affected by the Company's violation, together with any other appropriate relief.

Company Position

The Company says USAPA misreads the Agreement. It acknowledges a third seniority list has never been actually constructed. The list, it says, was "virtual" in nature, intended for the sole purpose of preserving pre-merger pilots' seniority rights in contemplation of the pilot seniority integration process. Thus, the parties intended to ensure that, for purposes of an integrated seniority list, new-hire pilots were understood to be junior to all pre-merger pilots, without regard to whether the new hires had been assigned to East or West operations. To apply the language in the manner here proposed by USAPA – to, for example, suspend furloughs (or pay protect) at one operation because (more junior) pilots at the other operation remained at work, would be to require a meaningful exception to the bargained agreement to maintain a strict fence – "Separate Operations" – between East and West. At no time did the parties anticipate creation of separate furlough rules applicable only to new hires. No such process was discussed during bargaining, nor does the language at issue reflect that type of approach. The Company requests the grievance be denied.

Relevant Contract Provisions

RELEVANT COLLECTIVE BARGAINING AGREEMENT PROVISIONS

TRANSITION AGREEMENT  
SECTION II

- ...A. The pilot workforces of America West and US Airways will remain separate and covered by their respective collective bargaining agreements (the "Separate Operations") until Operational Pilot Integration as provided in Section VI. A.

B. During Separate Operations:

1. US Airways Group will operate both America West and US Airways in accordance with the terms of this Letter of Agreement and the provisions of each carrier's respective collective bargaining agreement, as amended.
2. America west may operate under the US Airways designator code and marketing identity. US airways may operate under the America West designator code and marketing identity.
3. The aircraft (including orders and options to purchase or lease aircraft) and the operations of each of America West and US Airways will remain separated. A list of all aircraft in the service of each of America West and US Airways on the effective date of this Letter of Agreement is appended as Attachment A; and the fleet plan for the merged airline (by airline and tail number) is appended to this Letter of Agreement as Attachment B.
4. Pilots on the America West Seniority List will operate the aircraft in the service of America West on the effective date of this Letter of Agreement and pilots on the US Airways Seniority List will operate the aircraft in the service of US Airways on the effective date of this Letter of Agreement. Except as provided in paragraph 6, below, no pilot of either airline will fly as a crewmember on an aircraft listed in Attachment A in the fleet of the other airline.  
...
6. America West will not hire new pilots if pilots on the US Airways seniority list remain on furlough, provided that America West may hire a new pilot if all pilots on furlough have been offered recall to US Airways or have been offered positions by America West in the order of seniority. Available positions at America West will be offered to furloughed US Airways pilots under the recall provisions contained in Section 23, paragraph I of the US Airways – ALPA collective bargaining agreement, except that active MDA pilots with recall rights to US Airways will continue to be subject to the applicable freeze/hold provisions of LOA 91, attachment B "Recall to US Airways". A Furloughed US Airways pilot who declines who declines a position as an America West pilot retains the right to be offered the next position offered and also retains the right to be recalled to

US Airways in accordance with his US Airways seniority. A US Airways pilot who accepts a position at America West:

a) will be treated as junior to all pilots who are on the America West seniority list on the effective date of this Letter of Agreement, but pilots on the US Airways seniority list employed by America West under this paragraph 6 will be ranked among themselves in their order on the US Airways seniority list;

b) will be considered an employee of America West during Separate Operations and subject to the America West collective bargaining agreement;

c) will retain, accrue and be entitled to use his combined longevity at both carriers for all purposes including but not limited to pay (excluding furlough pay, which will be calculated based on time at America West only), benefits, vacation accrual, and eligibility towards pension contributions and health and welfare participation;

d) may be required to forego recall to US Airways for up to eighteen (18) months from the date of his employment as a pilot for America West;

e) will retain his position on the US Airways seniority list as will be integrated in the combined seniority list based on his position on the US Airways seniority list;

f) will not be required to serve a probation period as a pilot for America West;

g) will not receive furlough pay from US Airways with respect to the period of his service as a pilot for America West;

h) will be subject to any applicable background checks and employment requirements for pilots returning from furlough.

...7.B. America West may hire new pilots if all pilots on the US Airways seniority list have been offered recall to US Airways or have been offered a pilot position at America West. New pilots hired during the Separate Operations will be placed by their date of hire on a third seniority list entitled "New Hire Seniority List," will be



junior to all pilots on the pilot seniority lists of America West and US Airways on the effective date of this Letter of Agreement, and will continue to be junior to those pilots on the integrated seniority list of America West and US Airways pilots.

...

XII. Effective Date, Modification, Status of Letter of Agreement, and Duration

This Letter of Agreement:

- ...D. Governs in case of conflict between one of its terms and a provision of a collective Bargaining agreement between the Association and an Airline Party;

AMERICA WEST PILOTS' COLLECTIVE  
BARGAINING AGREEMENT

Section 22.A.

...5. Seniority shall govern all Pilots in case of promotion and demotion, retention in case of reduction in force, assignment or realignment due to expansion or reduction in schedules, reemployment after release due to reduction in schedules, reemployment after release due to reduction in force, and choice of vacancies, provided the Pilot can qualify and is able to assume the assignment."

US AIRWAYS PILOTS' COLLECTIVE  
BARGAINING AGREEMENT

Section 23

...7.C. Seniority shall govern all pilots in case of promotion and demotion, their choice of vacancies, filling of vacancies, their assignment or reassignment due to expansion or reduction in schedules, their retention in case of reduction in force, their re-employment after release due to reduction in force, placement or replacement, provided that the pilot is sufficiently qualified for the conduct of the operation to which he is to be assigned. In the event that a pilot is considered by the Company not to be sufficiently qualified, the Company shall immediately furnish such pilot with written reasons therefore. If a pilot does not have the required equipment ratings, she shall be afforded the regular Company check-out on such equipment to obtain such ratings, in accordance with system seniority.

...6. America West may hire new pilots if all pilots on the US Airways seniority list have been offered recall to US Airways or have been offered a pilot position at America West. New pilots hired during the Separate Operations will be placed by their date of hire on a third seniority list entitled "New Hire Seniority List," will be junior to all pilots on the pilot seniority lists of America West and US Airways on the effective date of this Letter of Agreement, and will continue to be junior to those pilots on the integrated seniority list of America West and US Airways pilots.

### Analysis

There is force to arguments on both sides of this issue. USAPA rests its case on the black and white terms of the Transition Agreement, with specific emphasis on the unequivocal reference to a third seniority list. The Company, for its part, says the list was conceptual in nature, in effect a "virtual" list never intended to control the day-to-day employment rights of new hires.<sup>8</sup> Indeed, says the Company, it is impossible to harmonize USAPA's approach with the undisputed premise that East and West operations were to be maintained separately.

A focused view of the relevant terms of Section II.B.7. will highlight this dispute:

---

<sup>8</sup> The Company argues:

Section II.B.7 was intended by the parties to have very limited application. Indeed, the bargaining history evidence at the hearing demonstrated that ALPA proposed Section II.B.7 as a means to ensure that pilots hired during the period of Separate Operations were not considered in any seniority integration arbitration between the two pre-merger ALPA pilot groups. Rather, the "third seniority list" referred to in Section II.B.7 was intended only to preserve the respective seniority rights of pre-merger pilots, as opposed to new-hire pilots, by providing new-hire pilots with provisional seniority numbers pending integration of the two pilot groups, which provisional seniority numbers then would be used to place the new-hire pilots at the bottom of an integrated seniority list. Given that ALPA fully-expected that a seniority integration arbitration between the two ALPA pilot groups would be required, it is entirely logical that ALPA would propose such language to protect its pre-merger pilots' seniority in integration as against some group of pilots not yet hired by the Company. (Co. Closing Brief, p. 23).

1. **“New pilots hired during the Separate Operations will be placed by their date of hire on a third Seniority List entitled, ‘New Hire Seniority List’.”** This sentence is unambiguous in requiring establishment of a third list, separate from the seniority lists utilized by America West and US Airways, respectively. This has not been done.

2. **“[The new pilots hired] will be junior to all pilots on the pilot seniority lists of America West and US Airways on the effective date of this Letter of Agreement. ....”** Again, there is no ambiguity here – new hires (purportedly on the “third” list) are immediately junior to “all pilots” on both East and West Operations. Thus, says USAPA, furloughing any pre-merger pilot before a new hire violates this agreement.

3. **“[New pilots hired] will continue to be junior to those pilots on the integrated Seniority List of America West and US Airways’ pilots.”** This, too, is unambiguous. It reflects agreement by the parties that at the point the seniority lists of the two carriers is integrated, new hires will, by agreement, be in all cases junior to pre-merger pilots.

USAPA says that, taken together, these paragraphs require its requested result– a third list, with seniority honored in all cases by furloughing new hires first, without regard to their assigned location. As indicated above, US Airways claims the third seniority list was never intended to exist as a standalone list; its purpose, says the Company, was restricted to codifying the parties’ agreement that all new hires would be junior to all pre-merger pilots at the time the seniority lists were finally integrated.

There can be no question the parties' Transition Agreement requires a third seniority list. The question here is: For what purpose? The clear purpose of Section II is to deal with the interim, very unique, situation faced by these merging companies – a period of separate operations characterized by the hiring of new pilots, but followed by a full integration of all personnel, pre- and post- merger hires. Both sides agree that, upon full integration, all new hires will be junior to all pre-merger pilots. The third seniority list accomplishes at least that much. But what of the interim period? There are three apparent options. First, the parties could have agreed new pilots would sign on with one operation, East or West, with seniority rights in that group determined by date of hire, and all seniority-based employment rights limited to the East or West operation until the moment of full integration. This is management's position. Second, the existence of the third list could be seen as accommodating the new hires' exercise of seniority rights at either operation, without apparent restriction either as to the location or scope of the bid (schedule, vacation, etc.). Neither party proposes this result.<sup>9</sup> Or, the third list could represent, as USAPA here urges, the intention that, during Separate Operations, it would control, but only for purposes of a furlough.

For the reasons that follow, the finding is that the Company's proposed reading is persuasive. As will be discussed, it is the only interpretation that successfully avoids a dramatic and ultimately irreconcilable clash between the seniority provisions and the companion "Separate Operations" language of the Transition Agreement. Moreover, while USAPA seeks to avoid this conflict by limiting application of the "third list" to

---

<sup>9</sup> But this, says the Company, is the unavoidable implication of the Association's proposed reading of the language at issue.

furlough scenarios, there is no such restriction apparent in the language itself. Finally, the Company has fully implemented the standard Separate Operation approach, including separate East and West seniority lists, with no objection from the Association at any time prior to the furloughs. This is strong evidence that the approach was, in fact, intended by the bargaining parties.

USAPA is right in contending, as it does, that inconvenience, unexpected difficulty or unforeseen expense in implementing the contract language does not require the conclusion the language is of no force. Thus, the obligation to pay protect certain pre-merger pilots or, indeed, to curtail (unexpectedly) certain East Operations (because East pilots would be furloughed and unavailable) should not be seen as justification for ignoring otherwise clear terms. At the same time, however, strict application of the Association's reading would, for example, potentially entitle new hires to exercise seniority, from time-to-time, at either operation, regardless of their assigned operation, to require the furloughing of a new-hire pilot from the East in response to an operational cutback in the West or to pay protect a furlougee in one operation because a junior pilot in the other operation remained actively employed. But these results would run squarely contrary to the core and character of this fence agreement. Section II.B.3 reflects the explicit understanding that, during the period of separate operations, America West and US Airways will operate independently:

The aircraft (including orders and options to purchase or lease aircraft) and the operations of each of America West and US Airways will remain separated. A list of all aircraft in the service of each of America West and US Airways on the effective date of this Letter of Agreement is appended

as Attachment A; and the fleet plan for the merged airline (by airline and tail number) is appended to this Letter of Agreement as Attachment B.<sup>10</sup>

According to the record, this is how operations have been conducted. The practice of these parties, one concludes, speaks loudly to their joint intentions. Currently, and at all times since execution of the Transition Agreement, new hire pilots have been offered jobs, and placed on the existing seniority lists at either the East or West operations.<sup>11</sup> In that manner, new pilots are able to bid for schedules, trips, vacations, training and domiciles within their respective systems. Questions of furlough aside for the moment, all aspects of these pilots' professional lives have been controlled, without objection, by the two existing seniority lists of the East and West Operations. This is entirely consistent with Section II.B.3. Any suggestion that new hires could in any way exercise seniority rights across system lines is emphatically rejected by the various fence provisions that were fashioned with extravagant care. And, there is no guidance in this record as to what, if any, rights new hires would have were they placed on neither the East or West lists, or as to how the Company could manage their bidding rights, wherever those rights might apply, under the respective, separate software systems. This cannot be dismissed as simply a matter of unexpected or unintended expense and logistical difficulty. Rather, in reading this Agreement, the conclusion must be that the parties intended, wherever possible, to read all provisions in harmony with one another,

---

<sup>10</sup> Section II.B.4 also reiterates the understanding, undisputed here, that the pilots of the respective carriers are to remain with their own metal:

Pilots on the America West Seniority List will operate the aircraft in the service of America West on the effective date of this Letter of Agreement and pilots on the US Airways Seniority List will operate the aircraft in the service of US Airways on the effective date of this Letter of Agreement. Except as provided in paragraph 6, below, no pilot of either airline will fly as a crewmember on an aircraft listed in Attachment A in the fleet of the other airline.

<sup>11</sup> There is only one – explicit – exception to the fence, Section II.B.6 allows furloughed East pilots to be offered and accept vacancies at West which retaining seniority on the East system.

and that the parties could not have intended the irreconcilable clash with fence provisions that form the core and character of the Transition Agreement itself. This conclusion is underscored by the absence of any dispute surrounding the implementation of this Agreement. The practice of the parties, therefore, may be seen as some strong indication as to the underlying intent of their bargained language.

USAPA suggests, however, that the concept of separate operations must yield under the circumstances here at issue. It concedes that § II.A. of the Transition Agreement provides for East and West pilot workforces remaining separate and covered by their respective collective bargaining agreements. It notes, however, that § XII.D<sup>12</sup> provides that the Transition Agreement “governs in case of conflict between one of its terms and a provision of a Collective Bargaining Agreement.”<sup>13</sup> Thus, it is claimed, the single “third list” must prevail over the individual East and West lists. But the conflict in this case arises not between the respective labor agreements and the Transition Agreement. As observed above, the collision in this case, were the Association’s reading to prevail, is directly between the Separate Operations provision of the Transition Agreement (II.A., *et seq.*) and the new-hire seniority language (II.B.7) of that *same document*. Indeed, since there is no mention whatsoever of furloughs in the Transition Agreement, the conclusion that such eventualities are to be covered by the explicit reduction in force language in the respective labor agreements<sup>14</sup> is inescapable. Under these circumstances, one must assume the bargaining parties did not intend to negotiate

---

<sup>12</sup> See p. , *supra*.

<sup>13</sup> USAPA Closing Br. p. 10.

<sup>14</sup> See Sections 22 and 23, *supra*, p. 6.

a conflict; a reasonable reading of the Agreement, taken in its entirety, is one that does not result in the wholesale invalidation of one or more of its clauses.

Nor may one conclude the parties intended to look at a third list only in the case of furloughs. There is no indication of any kind, either in the bargaining history or the language itself, the parties intended that kind of fine tuning. Had they so wished, they could have, and knew how to, draft an exception.<sup>15</sup> None, however, is present.

### Summary

In the final analysis, the job of the System Board is to interpret and apply the agreement so as to best reflect the bargained intentions of the parties. The contested language here at issue was likely to, (and did), engender confusion. But to the extent uncertainty existed, there is no evidence it was shared by those present at the bargaining table<sup>16</sup> or, in fact, by the parties to the Transition Agreement at any time prior to commencement of furloughs. Both sides to this agreement were fully content to assign new hires to existing seniority lists so their employment options would be managed, in the usual course, by seniority at their respective, separate systems. Nowhere in the record is there any indication the bargainers intended to carve out an exception that would somehow require the Company to cross the fence for furloughs. Had they so intended, they could have indicated that intention, as they did in II.B.6, the only apparent exception to the invincibility of the fence. The conclusion, therefore, is that the “third list” was intended to serve a more narrow, albeit profoundly important,

---

<sup>15</sup> As noted earlier, the parties did, in fact, draft an explicit exception to the otherwise comprehensive fence rule in § II.B.6. No similar exception exists in § II.B.7.

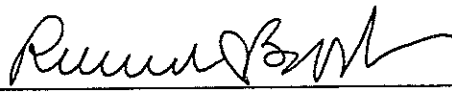
<sup>16</sup> Company negotiator Jerrold Glass testified, without rebuttal, that the pilot representatives at the bargaining table never proposed that II.B.7 would constitute an exception to the fence rules, or that it would establish separate furlough rules for new pilots during the Separate Operations. The word “furlough”, said Glass, was never mentioned. (Tr., pp. 105-106).



purpose, of protecting pre-merger pilots by ensuring new hires would be placed below all other pilots at the time the integrated seniority list was implemented. For these reasons, the grievance must be denied.

AWARD

The grievance is denied.



---

Richard I. Bloch, Esq.

May 8, 2009