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IN THE UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA

US Airways, Inc., a Delaware Corporation,
Plaintiff,
v.
Don Addington, an individual; John Bostic, an individual; Mark Burman, an individual; Afshin Iranpour, an individual; Roger Velez, an individual; and Steve Wargocki, an individual, on behalf of themselves and all other similarly-situated individuals,
and
US Airline Pilots Association, an unincorporated association,
Defendants.

Case No.: 2:10-cv-01570-ROS

**REPLY OF US AIRLINE
PILOTS ASSOCIATION TO
WPC RESPONSE TO US
AIRWAYS AND USAPA'S
STATEMENTS OF FACT**

1 Pursuant to L.R.Civ. 56.1(b), Defendant US Airline Pilots Association
2 (“USAPA”), by and through counsel undersigned, replies to certain paragraphs of the
3 West Pilots’ Response To (1) Plaintiff US Airways, Inc.’s Separate Statement of
4 Undisputed Facts (Doc. 156-1) and (2) US Airline Pilots Association’s Separate
5 Statement of Facts (Doc. 153) as follows.

6 **WPC Response to USAPA SOF ¶16:** The assertion: “The pilot neutrals serve as
7 independent decision makers and do not act as representatives of the respective Merger
8 Committees.” This is not supported by the text of ALPA Merger Policy and Mr. Mowrey
9 has no foundation for having such knowledge. Regardless, it is immaterial to the
10 motions at issue.

11 **REPLY:** In his Declaration (Doc. 153-3, ¶3), Captain Mowrey set forth his experience
12 in responsible positions with the US Airways MEC under the ALPA Constitution and
13 structure including on the US Airways Merger Committee. This experience provides
14 sufficient foundation for the statements made in his declaration (Doc. 153-3, ¶20)
15 concerning the role of pilot neutrals in the ALPA procedure. This statement along with
16 the relevant portions of ALPA Merger Policy fully support USAPA SOF ¶16.

17 **WPC Response to USAPA SOF ¶21:** The reasons why the US Airways MEC
18 demanded that ALPA set aside the Nicolau Award are speculative. The evidence
19 provided by USAPA merely shows the fact that US Airways MEC made certain
20 arguments to ALPA. It does not establish the validity of those arguments. Furthermore,
21 the MEC’s challenge to the Nicolau Award was rejected by ALPA on the merits. Doc.
22 151-1 at 137 [ADD 2152; App. 135 (ALPA president stating, “the Executive Council has
23 determined that there is no ground under ALPA Merger Policy to set aside the seniority
24 award.”)].

25 **REPLY:** The reasons why the US Airways MEC demanded that ALPA set aside the
26 Nicolau Award are clearly set forth in USAPA Exhibit 6, the written Presentation made
27 to the ALPA Executive Council in May 2007. As the Presentation states, the reasons
28 argued by the US Airways MEC are directly based on the dates of hire, ages and the then

1 current qualifications of the America West and US Airways pilots and the fleets and
2 flying then performed by America West and US Airways, all of which were a matter of
3 record. There is nothing speculative about the reasons that were given by the US
4 Airways MEC for its demand that ALPA set aside the Nicolau Award.

5 **WPC Response to USAPA SOF ¶23:** The full text of the West MEC filing in the D.C.
6 District Court states: “the final product of ALPA Merger Policy is not a binding seniority
7 list; a seniority list can be binding and enforceable only after ALPA proposes the list and
8 the employer agrees to it so that it becomes part of the collective bargaining agreement
9 governing the employees’ terms and conditions of employment.”

10 **REPLY:** This response admits what USAPA has said throughout this case, namely that
11 “the final product of ALPA Merger Policy is not a binding seniority list.” As the
12 America West MEC said elsewhere in its papers, the Nicolau Award was only a
13 “proposal.” USAPA SOF ¶23; USAPA Exhibit 9 (Opposition by America West MEC to
14 motion to remand), at p. 20 (referring to the Nicolau Award as a “proposal regarding
15 seniority integration”). And, as the WPC also fails to note, the ALPA/Nicolau list could
16 become effective only once it is included in a consolidated collective bargaining
17 agreement and ratified by the pilots. USAPA SOF ¶20, USAPA Exhibit 3 (Transition
18 Agreement), Section I.A.

19 **WPC Response to USAPA SOF ¶25:** The evidence merely shows that the US Airways
20 MEC stated that the East Pilots would not ratify a contract that incorporated the Nicolau
21 Award. The MEC had no reliable foundation to make such a determination. The
22 statement by Mr. Mowrey concerning career expectation is ambiguous, self serving, and
23 conclusory. Moreover, even if true the degree of East Pilot intransigence is immaterial.
24 *See Addington v. US Airline Pilots, Ass’n*, 2009 WL 2169164, *18 (Jul. 17, 2009) (“In
25 effect, USAPA claims that the East Pilots hold such strong objections to the Nicolau
26 Award that they always will vote as a bloc against any new CBA with it, enjoying the
27 self-denial of a single CBA with improved wages and working conditions into perpetuity.
28 Even if this unbelievable story is believed, it only means that the East Pilots have the

1 power of self-inflicted harm. It does not mean that the union's duty of fair representation
2 falls victim to self-hostagetaking.”).

3 **REPLY:** USAPA objects and moves to strike the quote from the decision of the District
4 Court in the *Addington* case, which was vacated by the Ninth Circuit. See USAPA
5 Response to US Airways Separate Statement of Facts (Doc. 162, pp. 2-3). Moreover,
6 USAPA SOF ¶25 accurately relates the opinion of the US Airways MEC as expressed
7 repeatedly at the time, as noted by the Ninth Circuit in *Addington*, and as borne out by the
8 fact that the pilot group voted out ALPA in a secret ballot election conducted by the
9 National Mediation Board.

10 **WPC Response to USAPA SOF ¶34:** USAPA could have established representatives of
11 the East and West Pilots to substitute in for the MECs. *See* Fed. R. Civ. P. Rule 17.

12 **REPLY:** Disputed. The parties to the litigation ceased to exist when USAPA was
13 certified as the exclusive representative of the consolidated pilot craft. There simply was
14 no one to carry on the litigation, and given USAPA's certification as the new bargaining
15 representative any reason for USAPA to be concerned about a non-binding internal
16 ALPA bargaining proposal.

17 **WPC Response to USAPA SOF ¶36:** Statements made in US Airways SEC filings are
18 hearsay where offered to prove the truth of the matter asserted. Without additional
19 information, these filings do not establish that America West was actually operated at a
20 loss. They merely establish that it was “booked” by US Airways as operating at a loss.

21 **REPLY:** The SEC requires the principal executive officer and the principal financial
22 officer to certify under oath the accuracy and completeness of their companies' SEC
23 Reports. Order issued by the SEC on June 27, 2002.¹

24 **WPC Response to USAPA SOF ¶38:** This is incomplete and misleading because it
25 omits the following facts:

- 26 • The USAPA List makes no adjustment for whether a pilot was on furlough at the time
27

28 ¹ <http://www.sec.gov/rules/other/4-460.htm>.

1 of the merger. RT at 766:9 to 766:11 [App. 301] (West Pilot Brian Stockdell).

2 • The USAPA List puts a majority of West Pilots at or close to the bottom of the list. RT
3 at 766:9 to 766:11 [App. 301] (West Pilot Brian Stockdell).

4 • The West Pilot protections disappear if the Airline were to reduce the total number of
5 pilot positions by 25% or more. *US Airways Seniority Integration* at § VIII [USAPA
6 2514-2515; App. 191- 192].

7 • The USAPA List offers no West Pilot protections against furloughs because the Airline
8 would implement all furloughs and recalls on a date-of-hire basis. *Id.* at § VII [USAPA
9 2514; App. 191]

10 **REPLY:** This Response does not contest that the Conditions and Restrictions that are
11 part of the USAPA proposal in fact protect America West pilots from being displaced
12 from their domiciles and regular assignments. Nor does this Response dispute that under
13 USAPA’s proposal 63 senior West pilots would immediately become eligible to bid wide
14 body positions that did not exist at America West because America West had no wide
15 body aircraft. Such positions are more favorable than any positions that America West
16 pilots had prior to the merger. This Response complains that the USAPA proposal
17 “makes no adjustment for whether a pilot was on furlough” but fails to note that the
18 proposal makes no adjustment for furloughs for either America West or US Airways
19 pilots. By saying that the USAPA proposal “puts a majority of West pilots at or close to
20 the bottom of the list,” this Response suggests that pilots are merged on some basis other
21 than date of hire, which is not true. And, finally, USAPA has repeatedly tried to discuss
22 the proposal with the West pilots, but has been frustrated by the actions of various West
23 pilots and the Army of Leonidas who have opposed and interfered with those attempts.
24 See USAPA SOF ¶¶46-50 & n.4. USAPA will ensure that these complaints will be
25 addressed in the process of negotiating a single integrated collective bargaining
26 agreement with US Airways. Assuring fair and equitable career progression and job
27 security of all US Airways pilots are priorities for USAPA. **WPC Response to USAPA**
28 **SOF ¶39:** There is no evidence that ALPA changed its policy in response to perceived

1 problems with the Nicolau Award. Moreover, there is no evidence that the arbitration of
2 this seniority integration would have had a different result if it had been conducted under
3 the current version of ALPA Merger Policy.

4 **REPLY:** The evidence showing that the ALPA Merger Policy was changed in response
5 to the problems raised by the ALPA/Nicolau list is stated in USAPA SOF ¶¶26 & 39. In
6 particular, the changes came as the result of a Committee appointed in October 2007 at
7 the height of the America West-US Airways dispute, and the Committee included Capt.
8 Jim Brucia, the dissenting member of the ALPA Arbitration panel that issued the
9 ALPA/Nicolau list.²

10 <http://www.alpa.org/LinkClick.aspx?fileticket=WpYTk6T1Hs0%3D&tabid=3345>.

11 Finally, the new Policy has different criteria (Career Expectations, Longevity and Status
12 and category). Thus, while there may be no “evidence” that a decision made using the
13 new (and different) criteria would be different, it seems silly to suggest, as the WPC
14 do, that it would be the same.

15 **WPC Response to USAPA SOF ¶46:** There is no evidence supporting footnote 4. It is
16 not even clear who is claiming to have the information and belief stated in this footnote.
17 The facts stated in the body of this paragraph are otherwise uncontested.

18 **REPLY:** The evidence supporting footnote 4 is in USAPA SOF ¶¶46-50 and the
19 supporting declarations.

20 **WPC Response to USAPA SOF ¶51:** USAPA is not open to negotiation. A November
21 2011 update from the USAPA negotiation committee, attached hereto as Exhibit “B,”
22 states in regard to USAPA’s latest contract proposal: “this document incorporates the
23 Association's September 2008 seniority proposal. In doing so, we reject the statements
24 that have been made by senior management that a solution on seniority must be reached
25 before there can be an agreement.” *NAC Update*, 8 (Nov. 16, 2011).

26 A November 2011 letter to pilots from USAPA President Cleary, attached

27 ² See <http://www.alpa.org/LinkClick.aspx?fileticket=WpYTk6T1Hs0%3D&tabid=3345>,
28 ALPA’s explanation of how the new Merger Policy was formulated.

CERTIFICATE OF SERVICE

I hereby certify that on March 19, 2012, I electronically transmitted the attached document to the Clerk's Office using the CM/ECF System for filing and transmittal of a Notice of Electronic Filing to the following CM/ECF registrants:

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