

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION
CIVIL ACTION NO. _____

US AIRWAYS, INC.,

Plaintiff,

v.

US AIRLINE PILOTS ASSOCIATION and
MICHAEL J. CLEARY,

Defendants.

**DECLARATION OF E. ALLEN
HEMENWAY IN SUPPORT OF
PLAINTIFF'S MOTION FOR
PRELIMINARY INJUNCTION**

I, E. ALLEN HEMENWAY, declare and state as follows:

1. I am employed by US Airways, Inc. ("US Airways" or "the Company"), as Vice President of Labor Relations. I have personal knowledge of the facts set forth below and if called as a witness in this matter, I could and would competently testify thereto.

2. My declaration is organized into three sections. Section A provides background information regarding my work experience at US Airways. Section B provides background information regarding USAPA, the East and West pilots' seniority dispute, and the parties' contract negotiations. Section C describes certain aspects of USAPA's current campaign to obtain leverage in its negotiations with US Airways for a new collective bargaining agreement by encouraging its members to disrupt US Airways' operations, including describing certain of USAPA's specific communications. Section C also describes several letters that the Company sent USAPA in an attempt to get USAPA to comply with its legal obligations.

A. Background Regarding Work Experience

3. I have held my current position as Vice President of Labor Relations at US Airways since November 2004. In this position, I have responsibility for US Airways' labor

relations with each of its collective bargaining units. In my current position, I participate in negotiations with USAPA for a single collective bargaining agreement applicable to all pilots of US Airways. Prior to November 2004, I was the Managing Director of Labor Relations — Ground, a position I assumed in 2002. I joined US Airways from PSA Airlines, Inc. in 1988 as a Regional Manager in Customer Service with responsibilities for US Airway’s Northeast operations. During the course of my career, I have held a number of key management roles, including Regional Director of Customer Service, Director of Hub Operations and Station Services, and Director of Labor Relations for ground-related employees. I began my airline career in 1968 as a Ramp Agent with PSA in Ontario, California. While at PSA, I held a number of supervisory and management positions, including Manager of Stations in both Las Vegas and San Diego, and Director for Customer Service for the Northern region.

B. Background Regarding USAPA, the East and West Pilots’ Seniority Dispute, and the Parties’ Contract Negotiations

4. USAPA is an independent labor union, with its headquarters in Charlotte, North Carolina. USAPA has been the certified collective bargaining representative under the Railway Labor Act (“RLA”) of pilots at US Airways since April 18, 2008. USAPA is governed by the Board of Pilot Representatives (the “BPR”), which consists of the USAPA Chairmen and Vice-Chairmen for each of US Airways’ four pilot domiciles or bases (Charlotte, Philadelphia, Washington, D.C., and Phoenix). USAPA has four officers: a President, Vice-President, Executive Vice-President, and Secretary-Treasurer of USAPA. USAPA also maintains a large number of standing committees such as the Safety Committee and Strike Preparedness Committee. Michael J. Cleary is the President of USAPA.

5. In May 2005, the respective holding companies of America West Holdings Corp. (“America West”) and US Airways announced the merger of America West and US Airways

with an effective date of September 27, 2005. Under the Merger Agreement, US Airways Group, Inc., which was then operating under Chapter 11 bankruptcy protection, would be reorganized, and the reorganized entity, known as “US Airways,” would own and control the former America West and US Airways.

6. At the time of the 2005 merger of US Airways and America West, the East pilots (who were employed by pre-merger US Airways) and the West pilots (who were employed by pre-merger America West) were both represented by the Air Line Pilots Association (“ALPA”).

7. In connection with the merger, the East pilots, the West pilots, and the merging companies agreed, in a collectively-bargained multilateral agreement (the “Transition Agreement”), that the pilot workforces of the two airlines would be combined. The Transition Agreement supplements and amends the collective bargaining agreements that existed at the time of the merger. Those same collective bargaining agreements are currently in effect. Under the RLA, collective bargaining agreements do not expire, but become “amendable” by the parties, while remaining in effect. The collective bargaining agreement between US Airways and the West pilots became amendable on December 30, 2006, and the collective bargaining agreement between US Airways and the East pilots became amendable on December 31, 2009. A dispute arose, however, between the East and West pilots as to their relative placement on an integrated pilot seniority list. The East pilots and the West pilots, represented by separate counsel, arbitrated their seniority dispute before a neutral arbitrator, George Nicolau.

8. Although US Airways was not a party to that arbitration, it agreed in the Transition Agreement to accept the resulting integrated seniority list so long as certain conditions were satisfied. The arbitrator issued an award, referred to as the “Nicolau Award,” in May 2007. According to ALPA’s constitution, the results of the arbitration were to be “final and binding” as

between the East pilots and the West pilots. The East pilots perceived the Nicolau Award to be less favorable to them as a group than the “date-of-hire” integrated seniority list they had sought from Arbitrator Nicolau. Pursuant to the Transition Agreement, ALPA presented the integrated seniority list based on the Nicolau Award, and US Airways was obligated to accept that seniority list. US Airways did so in late 2007.

9. In response to the Nicolau Award, the East pilots formed a new labor union, USAPA, whose constitution expressly mandates a “date-of-hire” integrated seniority list and prohibits implementation of the Nicolau Award. The East pilots significantly outnumber the West pilots and, in that context, USAPA won an election among all of the pilots and was certified as the labor union for both the East and West pilots on April 18, 2008. The West pilots allege that USAPA was formed solely for the purpose of evading the obligation to include the Nicolau Award in the collective bargaining agreement with US Airways. According to USAPA, the Nicolau Award, which directly conflicts with the “date-of-hire” seniority mandated by USAPA’s Constitution, grants “super seniority to more junior West pilots” at the expense of more senior East Pilots. The West pilots, by contrast, regard the Nicolau Award as “an equitable integration of the seniority lists,” and regard “a date-of-hire seniority list as inequitable.”

10. In 2008, after a dramatic spike in the price of fuel, US Airways announced that it would be forced to furlough pilots. Some of the pilots to be furloughed were West pilots, who would not have been subject to furlough if a single collective bargaining agreement (“CBA”) incorporating the Nicolau Award were in place at the time. The West pilots brought suit in federal court in Phoenix against USAPA in *Addington*, asserting a claim for breach of USAPA’s duty of fair representation based on its refusal to adopt the Nicolau Award in its negotiations with US Airways for a single CBA that would be applicable to the combined pilot workforce. A

jury found that USAPA had violated its duty of fair representation because it “cast aside the result of an internal seniority arbitration solely to benefit the East Pilots at the expense of the West Pilots,” and “failed to prove that any legitimate union objective motivated its acts.” I have attached as Exhibit 1 a true and correct copy of the decision from the United States District Court for the District of Arizona.

11. USAPA appealed, and the Ninth Circuit reversed, finding that the West pilots’ action for breach of the duty of fair representation was not yet ripe. I have attached as Exhibit 2 a true and correct copy of the decision from the Ninth Circuit.

12. US Airways anticipated that the *Addington* case would provide clarification—one way or the other—regarding the legality of entering into an agreement with USAPA for a non-Nicolau seniority list. But, given the Ninth Circuit’s ruling on ripeness, that clarification was not provided.

13. After the Ninth Circuit issued its opinion, USAPA and the West pilots each insisted that US Airways take its side in the seniority dispute—or face dire consequences. The West pilots assert that the Ninth Circuit’s opinion merely postpones a decision on their duty of fair representation claim and authorizes them to sue USAPA and US Airways if agreement is reached on a non-Nicolau seniority list. And their counsel has sent US Airways multiple letters threatening to sue US Airways under the RLA for, *inter alia*, “facilitat[ing]” or “assist[ing]” USAPA’s breach of DFR if US Airways accepted USAPA’s seniority demands.

14. USAPA, on the other hand, interprets *Addington* as authorizing agreement to a non-Nicolau seniority list and as specifically allowing it to insist on a “date-of-hire” seniority list. If US Airways rejects USAPA’s seniority position and refuses to negotiate a non-Nicolau

seniority list, USAPA has made clear that it will initiate a work stoppage at its “earliest opportunity.”

15. Faced with this Hobson’s choice, in July 2010, US Airways filed a declaratory judgment action against USAPA and the class of West pilots seeking a judicial determination of the parties’ rights and obligations. That case is currently pending in the District of Arizona, Case No. CV 10-1570-PHX-ROS. USAPA moved to dismiss on ripeness grounds, and in June 2011, the court denied that motion, finding that the case was ripe because absent judicial relief, US Airways would be subject to a real threat of litigation by the West pilots, or a real threat of a strike following completion of the RLA negotiation process by the East pilots. I have attached as Exhibit 3 a true and correct copy of the court’s order.

16. US Airways began negotiating with ALPA for a single CBA in November 2005. Those negotiations were not successful in part because the East pilots withdrew from the negotiations in August 2007 after issuance of the Nicolau Award. Following USAPA’s certification in April 2008, US Airways and USAPA began meeting regarding a single CBA in June 2008. Since January 2010, these negotiations have been mediated by the National Mediation Board (“NMB”). In the current negotiations, USAPA continues to insist on a non-Nicolau seniority list. USAPA has repeatedly expressed its frustration with the length of the current negotiations and the failure of the parties to reach agreement on a single CBA.

C. Certain Aspects of USAPA’s Campaign

17. USAPA is currently conducting a purported “safety” campaign that I believe to be an attempt to gain leverage in collective bargaining negotiations by disrupting US Airways’ operations, with much of the disruption in Charlotte.

USAPA Links “Safety” and “Flying the Contract” to Obtaining a New Contract

18. While safety became the primary focus of USAPA’s campaign in the fall of 2010, USAPA tied “safety” and “flying the contract” to its efforts to obtain a new contract much earlier. For example, on April 12, 2009, USAPA’s Charlotte domicile issued an update that addressed the status of contract negotiations, stating that USAPA must “demand an industry standard contract.” The update then stated that obtaining an industry standard contract “takes work from all of us; stay informed, and continue the campaign of remaining Good Union Pilots.” Immediately after telling pilots that they would have to “work” and be “Good Union Pilots” to get a new contract, USAPA then told pilots that they have “the latitude to stop the operation if in their mind safety standards are compromised.” I have attached as Exhibit 4 a true and correct copy of the April 12, 2009 update.

19. Similarly, in a December 18, 2009 publication issued by USAPA’s Charlotte Domicile, just before the East pilots’ labor contract became amendable on December 31, 2009, USAPA linked the “fight” for a new contract to “Fly[ing] Safe” and “flying the contract.” I have attached as Exhibit 5 a true and correct copy of the December 18, 2009 update.

20. And in February 2010, USAPA issued an update stating in part: “Pilots are reminded to review FOM 1.3.4 Captains Authority: If the Captain is dissatisfied with any aspect of the aircraft’s airworthiness and/or maintenance status, or if he is not sure the operation can be safely executed, then the operation will stop until he is completely satisfied. Please remember we have 224 pilots on furlough. Fly safely, Act Your Wage and be a Good Union Pilot.” I have attached as Exhibit 6 a true and correct copy of the February 2010 update.

USAPA Attempts to Eliminate Voluntary Flying by Check Pilots

21. Following these early communications linking safety and “flying the contract” to contract negotiations, USAPA explicitly directed check pilots to reject voluntary flying. As

described in the Declaration of Lyle Hogg, voluntary flying is a process that is used to staff flights that do not have a pilot assigned to them by offering that flight to a check pilot.

22. In April 2010, USAPA threatened check pilots who accepted voluntary flying with sanctions. In an April 2010 publication, USAPA informed its members that because “line pilots continue to express displeasure with . . . check airman [*sic*] flying at company request on days off,” USAPA has “increase[d] its oversight of . . . Check Airmen that fly on their days off at company request . . . [and] that the names of pilots that participate in this activity [will] be published.” The April 2010 communication also indicated that a USAPA committee “will begin seeking feedback from our line pilots to determine your level of resentment against those pilots willing to ‘help out’ with understaffing issues when we have pilots on furlough . . . [and] soliciting your suggestions on other sanctions that may be appropriate to deter this activity.” I have attached as Exhibit 7 a true and correct copy of the April 2010 communication.

23. The Company’s labor relations group did not learn about these communications regarding voluntary flying by check pilots until December 2010. Shortly thereafter, I sent a letter to Mike Cleary, USAPA’s President, stating that “USAPA’s on-going campaign to persuade Company pilots not to perform voluntary flying authorized by our collective bargaining agreement violates its status quo obligations under the Railway Labor Act.” The letter demanded that USAPA and each of its authorized committees comply with their legal obligations. I have attached as Exhibit 8 a true and correct copy of US Airways’ letter, dated December 23, 2010.

24. In response, USAPA did not agree to comply with its obligations and suggested that its campaign was somehow justified because it was motivated by a desire to minimize furlough. I have attached as Exhibit 9 a true and correct copy of USAPA’s letter, dated January

28, 2011. US Airways then sent a letter stating that the RLA contains no exception for status quo violations that are accomplished in order to minimize furloughs. I have attached as Exhibit 10 a true and correct copy of US Airways' letter, dated February 11, 2011.

Letter Regarding Inspection Hole Covers on the Airbus Fleet

25. On December 23, 2010, following the flight delays caused by November/early December 2010 communications issued by USAPA regarding missing inspection hole covers on Airbus aircraft (as detailed in the Declaration of Lyle Hogg), I wrote a letter to USAPA summarizing the Company's findings and conclusion that USAPA purposely deceived pilots into refusing to fly safe airplanes in order to cause disruptions to US Airways' flights. The letter asked that the USAPA Safety Committee immediately retract and correct the November 30 and December 1 Safety Alerts. USAPA refused to do so at that time — and still has not done so. I have attached as Exhibit 11 a true and correct copy of US Airways' letter, dated December 23, 2010.

Letter Regarding Distance Learning Campaign and Slowdown Campaign Under the Guise of Safety

26. On April 28, 2011, after learning of a campaign aimed at persuading pilots not to finish their distance learning, and learning of a series of communications under the guise of safety seeking to persuade pilots to delay calling for taxi clearance, slow tax aircraft, write up minor discrepancies, drop flights, and call in sick and/or fatigues (as detailed in the Declaration of Lyle Hogg), I sent USAPA a letter demanding that it take immediate steps to stop this unlawful activity as required by the RLA. I have attached as Exhibit 12 a true and correct copy of US Airways' April 28, 2011 letter.

27. USAPA, however, continued on its course. On May 3, 2011, USAPA's Strike Prep Committee released a publication linking USAPA's purported safety campaign to working

conditions, stating in part that: “it is time for us to make a concise and powerful statement that we will no longer tolerate unfair working conditions at our airline. What should you do? There are many things that we must focus on as we move forward. First and foremost is the safety culture. . . . We must MEET OR EXCEED the safety standards of the FOM [Flight Operations Manual] and FARs [Federal Aviation Regulations] in every single decision that we make. . . . A storm approaches, my friends.” I have attached as Exhibit 13 a true and correct copy of the May 3, 2011 communication issued by USAPA’s Strike Prep Committee.

28. Then, on May 10, 2011, USAPA responded to the Company’s April 28 letter demanding that it stop the unlawful actions. USAPA asserted that it did not endorse any concerted action in regards to pilots not completing distance learning, but that “[s]afety is another matter.” Instead of addressing the Company’s contention that USAPA is engaged in a slowdown campaign under the guise of safety, USAPA’s letter defended its actions and instructions to pilots with respect to slowing down the operation. I have attached as Exhibit 14 a true and correct copy of USAPA’s May 10, 2011 letter.

USAPA Intimidates Pilots Who Do Not Participate in Its Illegal Slowdown Campaign

29. On June 23, 2011, USAPA’s Charlotte domicile issued an update asking pilots to report their colleagues who accept flight assignments from the scheduling department referred to in the East pilot collective bargaining agreement as POTA (Priority of Trip Assignments). The publication instructs pilots not to answer calls from the scheduling department, and goes on to state that the names of pilots who accept POTA assignment will be published to the union membership and that such pilots will be nominated for “The Doug Parker Golden Bonus Award” — described by USAPA as an award “to be given in recognition of any pilot who goes above and beyond the call of duty to make sure Doug Parker and his management team continues to ‘earn’ their hefty bonuses.” The update provided examples of certain pilots who were

nominated, including a pilot who answered a call from the scheduling department and accepted a POTA assignment in order to prevent a flight cancellation. I have attached as Exhibit 15 a true and correct copy of the June 23, 2011 update.

30. Then on July 24, 2011, an anonymous text message was sent to East pilots stating: “Seems like we have our first winner for the COMPANY SUCK UP AWARD... PINK PANTY AWARD or whatever you want to call it. This A330 CAP on Reserve, on July 15th had 1 Day Available, suddenly on July 16th he is on a FRA 3 day trip. Congratulations go to [US Airways pilot] TOM BELTZ as our first winner. Keep up the good work by screwing all your fellow pilots that are trying to get a contract we deserve. If you have a good reason please let everyone know.” I have attached as Exhibit 16 a true and correct copy of the July 24, 2011 text message.

31. Around this same time, a card was placed in a pilot’s mailbox stating: “CONGRATULATIONS! You’re a WINNER! Your heroic effort to help management achieve their bonus checks has earned you the Pretty Pink Panties award[.] Do you want a new contract? EARN IT[.]” I have attached as Exhibit 17 a true and correct copy of the card.

32. Other anonymous e-mails have also been distributed threatening pilots who do not participate in USAPA’s campaign. For example, on July 16, 2011, an anonymous e-mail stated that it would publish the names of pilots who did not “drop trips” — a process by which pilots can reduce their schedule and which if done collectively can force the Company to cancel flights. I have attached as Exhibit 18 a true and correct copy of the July 16, 2011 e-mail.

33. And a July 22, 2011 anonymous e-mail instructing pilots to take steps to hurt the Company’s on time performance measures expressly stated that “[p]eer pressure is an important aspect of [the] effort.” The e-mail stated that the author “will make sure that all of our pilots know who is not strong enough to walk the walk. . . and this is no place for pansies,” noting that

while the on time performance of individual crews is being monitored, pilots can submit nominations for “company pilot of the week” to “captainsonboard@aol.com.” I have attached as Exhibit 19 a true and correct copy of the July 22, 2011 e-mail.

34. And another anonymous e-mail from July 22, 2011 (from the e-mail address “b767pilotdriver@gmail.com”) stated that the sender of the e-mail had obtained a list of the names of pilots who accepted voluntary flying and stating that “We will be watching these same individuals” I have attached as Exhibit 20 a true and correct copy of the July 22, 2011 e-mail.

West Pilots Have Recognized and Communicated to the Company that USAPA’s Campaign Is an Illegal Slowdown

35. On May 1, 2011, a West pilot sent an e-mail to US Airways’ Chief Executive Officer and its President, stating:

Mr. Cleary [USAPA’s President] has transformed his vocal criticism of US Airways’ safety culture into an organized and illegal job action complete with ID lanyards and a phone tree. We’ve received numerous reports from pilots whom [sic] have received anonymous phone calls and text messages cryptically calling for an organized work action. They must believe that by illegally sabotaging the operation and jeopardizing the financial health of our airline that Mr. Parker will cede to USAPA’s demands for an industry standard contract and DOH. We the west pilots think its time to stop this.

I have attached as Exhibit 21 a true and correct copy of the May 1, 2011 e-mail, with the pilot’s name redacted to protect the pilot from harassment.

36. On May 10, 2011, a West pilot sent an e-mail to US Airways’ Chief Executive Officer stating, in part:

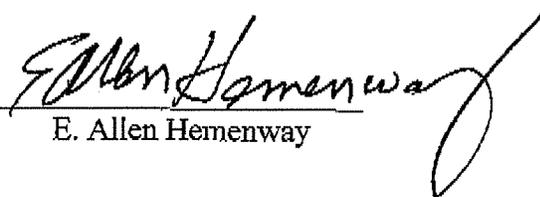
I cannot speak for the rest of the “West” pilots. However, I think each one of them would agree that the actions of our so called union USAPA are not only inappropriate, but often down right embarrassing. I do not support USAPA’s so called “onboard” campaign. I do not support USAPA’s efforts to publicly suggest that USAirways is an unsafe airline. In my opinion these are simply the actions of a desperate group trying to make a miss-placed political statement.

I have attached as Exhibit 22 a true and correct copy of the May 10, 2011 e-mail, with the pilot's name redacted to protect the pilot from harassment.

37. And on July 1, 2011, a West pilot sent a letter praising US Airways' "strong, vibrant, and adaptive safety culture" and noting that USAPA's publications and specifically its Safety Committee is only "intended to politicize the safety process" and its communications contain an "implicit message" to "violate federal law by engaging in fruitless and illegal job actions." I have attached as Exhibit 23 a true and correct copy of the July 1, 2011 letter, with the pilot's name redacted to protect the pilot from harassment.

I declare under penalty of perjury under the laws of the United States that the foregoing statements are true and correct.

Executed this 28th day of July, 2011, at Tempe, Arizona.


E. Allen Hemenway

CERTIFICATE OF SERVICE

I hereby certify that the foregoing **DECLARATION OF E. ALLEN HEMENWAY IN SUPPORT OF PLAINTIFF'S MOTION FOR PRELIMINARY INJUNCTION** was served on Defendants United Airlines Pilots Association and Michael J. Cleary by depositing a copy with the United States Postal Service, certified mail, return receipt, postage prepaid, addressed to the following:

US Airline Pilots Association
c/o Michael J. Cleary
26-A Cedar Point Road
Durham, NH 03824

Michael J. Cleary
26-A Cedar Point Road
Durham, NH 03824

and on Defendant United Airlines Pilots Association via hand delivery to the following address:

US Airline Pilots Association
200 East Woodlawn Road, Suite 250
Charlotte, North Carolina 28217-2207

This the 29th day of July, 2011.

/s/ Robert R. Marcus

Robert R. Marcus

Attorney for Plaintiff