

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.

**BRIEF IN SUPPORT OF PLAINTIFF'S  
MOTION FOR STATUS CONFERENCE  
AND EXPEDITED SCHEDULING ORDER  
FOR PLAINTIFF'S MOTION FOR  
PRELIMINARY INJUNCTION**

Pursuant to Local Rule 7.1(C), Plaintiff US Airways, Inc. ("US Airways") hereby submits this Brief in Support of Plaintiff's Motion for Status Conference and Expedited Scheduling Order for Plaintiff's Motion for Preliminary Injunction.

**NATURE OF THE MATTER BEFORE THE COURT**

On July 29, 2011, US Airways filed a Complaint for Injunctive Relief against the US Airline Pilots Association and Michael J. Cleary (collectively, "Defendants") arising out of an illegal slowdown campaign designed by USAPA to disrupt US Airways' operations in order to put pressure on US Airways in its current collective bargaining negotiations with USAPA. USAPA recently intensified its campaign, resulting in a significant change in pilot behavior, which in turn is now disrupting US Airways' operations and the travel plans of many thousands of members of the public — primarily at its Charlotte hub (US Airways' largest operation). Accordingly, US Airways has also filed a Motion for Preliminary Injunction ("Motion for Preliminary Injunction") contemporaneously with the Complaint seeking a preliminary injunction prohibiting USAPA from continuing this slowdown campaign. Because of the urgent nature of its Motion for Preliminary Injunction, US Airways is filing this Motion asking the

Court to schedule a status conference as soon as possible and enter an expedited scheduling order for Plaintiff's Motion for Preliminary Injunction.

### **ARGUMENT**

In its Motion for Preliminary Injunction, US Airways seeks a preliminary injunction prohibiting Defendants from continuing to engage in a slowdown campaign. Case law under the Railway Labor Act, 45 U.S.C. § 151 *et seq.*, involving virtually identical slowdown campaigns establishes that USAPA's campaign is unlawful and should be enjoined by this Court. *See United Air Lines, Inc. v. Air Line Pilots Ass'n, Int'l*, 563 F.3d 257 (7th Cir. 2009) (affirming the district court's issuance of a preliminary injunction based on a campaign by pilots to increase sick leave); *Delta Air Lines, Inc. v. Air Line Pilots Ass'n, Int'l*, 238 F.3d 1300 (11th Cir. 2001) (reversing, as an abuse of discretion, the district court's failure to issue a preliminary injunction against Delta's pilots' union based on a campaign by pilots to refuse overtime flying); *United Air Lines, Inc. v. Int'l Ass'n of Machinist & Aerospace Workers*, 243 F.3d 349 (7th Cir. 2001) (reversing, as an abuse of discretion, the district court's failure to issue a preliminary injunction against a safety slowdown campaign by United Air Lines' mechanics). As discussed below, the slowdown campaign is causing substantial and continuing harm to US Airways and the public and will continue to do so until a preliminary injunction is issued prohibiting this conduct.

The illegal slowdown campaign has caused, on average, nine to ten flight cancellations a day since May 1. This means that the travel plans and lives of approximately 1,173 passengers a day are being disrupted by the campaign — or 105,500 members of the traveling public to date. Cancellations of this magnitude also directly translate into incalculable irreparable harm to US Airways' customer goodwill and business reputation in an industry in which customers have a choice and make decisions based on reliability and reputation. US Airways and the public,

therefore, are continuing to suffer irreparable harm every day the illegal slowdown campaign is allowed to continue.

Since May 1, 2011, US Airways' pilots have been disrupting operations by engaging in the specific delay tactics encouraged by USAPA, such as slowing down when they taxi aircraft. The average historical "taxi-in" time (when a pilot taxis the aircraft to the gate after landing) and "taxi-out" time (when a pilot taxis the aircraft from the gate to take off) for East pilots have increased dramatically since May 1. There has been a similar dramatic increase in flight departure delays attributed to East pilots. Historically, 1.31% of US Airways' flights flown by East pilots are delayed for reasons attributable to those pilots. Since May 1, however, that rate has more than doubled to 2.85%. During this same time, these operational metrics have been within normal ranges for West pilots.

The change in pilot behavior has dramatically impacted numerous aspects of US Airways' operations leading to flight cancellations (as described above) and also delays. For example, since May 1, 2011, the percentage of the Company's flights flown by East pilots that arrive at their scheduled arrival time has dropped by more than 11 percentage points (after controlling for weather and other factors). When there is an increase in late arriving flights, there is a subsequent increase in the number of passengers who miss their connecting flights and/or whose bags do not make it to a connecting flight. For example, since May 1, the number of bags that do not make it onto a passenger's connecting flight has increased by more than 45% for every 1,000 connecting passengers at Charlotte.

Given the serious consequences to US Airways and the public resulting from USAPA's conduct, as set forth in Plaintiff's Motion for Preliminary Injunction, US Airways' need for injunctive relief is urgent. Accordingly, US Airways would like to have its Motion for

Preliminary Injunction heard as soon as practicable. To this end, US Airways requests that this Court schedule a status conference as soon as possible and adopt the following expedited schedule for US Airways' Motion for Preliminary Injunction:

- a. Defendants must file their brief in opposition to US Airways' Motion for Preliminary Injunction along with any supporting declarations, within fourteen (14) days;
- b. US Airways must file any reply brief within five (5) days of the date on which Defendants' opposition brief is filed;
- c. US Airways requests that the Court schedule a hearing on the Motion for Preliminary Injunction to commence as soon as possible upon completion of the briefing;
- d. No later than three (3) business days before the hearing, each party shall file with the Court and serve on the other parties a list of all witnesses that the party intends to call at the hearing and a list of all exhibits that the party intends to introduce, other than witnesses or exhibits used solely for purposes of impeachment and rebuttal; and
- e. All declarations filed and served at least three (3) business days before the hearing may, at the party's option, be used at the hearing as that witness' direct testimony, subject to substantive objections and subject to cross-examination at the hearing.

US Airways believes that this expedited schedule for its Motion for Preliminary Injunction is preferable to pursuing a temporary restraining order ("TRO") against USAPA for the following reasons: (i) the papers filed in support of US Airways' Motion for Preliminary Injunction are voluminous, and US Airways recognizes that Defendants should be given a

reasonable time to respond; (ii) a TRO would be limited by the Norris-LaGuardia Act, 29 U.S.C. § 101, *et seq.* (“NLGA”) to five days duration, and thus it would be necessary either to extend the TRO or hold a preliminary injunction hearing in a compressed time frame; (iii) in previous cases, labor unions have taken the position that the NLGA requires an evidentiary hearing before issuance of a TRO, and although US Airways does not agree with that position, it would be highly inefficient to hold two evidentiary hearings;<sup>1</sup> and (iv) the Court and the parties would be better served by a decision based on a full evidentiary and legal record. If the schedule for US Airways’ Motion for Preliminary Injunction is not expedited, however, US Airways reserves the right to seek a TRO in order to protect its ongoing business operations.

### **CONCLUSION**

For the reasons discussed above, US Airways respectfully requests that this Court schedule a status conference as soon as possible and issue an expedited scheduling order for Plaintiff’s Motion for Preliminary Injunction.

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<sup>1</sup> Section 6 of the NLGA, by its terms, requires an evidentiary hearing before issuance of any “temporary or permanent injunction.” In context, US Airways submits, the reference to “temporary . . . injunction” means a preliminary injunction and not a TRO because the latter, by definition, is an *ex parte* proceeding. *See Delta Air Lines, Inc.*, 238 F.3d at 1305-06 (11th Cir. 2011) (“The NLGA also prescribes procedural rules for civil proceedings in which an employer seeks an injunction or TRO against its employees. For an injunction, live testimony with opportunity for cross-examination is normally required after proper notice; for a TRO, though, sworn affidavits may suffice if the complainant would suffer ‘substantial and irreparable injury’ without the TRO.”); *see also Celotex Corp. v. Oil, Chem. & Atomic Workers Int’l Union*, 516 F.2d 242, 247 (3d Cir. 1975) (“we consider not the provisions of § 7 dealing with injunctions . . . but the provisions dealing with temporary restraining orders”).

This the 29th of July, 2011.

/s/ Robert R. Marcus  
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**CERTIFICATE OF SERVICE**

I hereby certify that the foregoing **BRIEF IN SUPPORT OF PLAINTIFF'S MOTION FOR STATUS CONFERENCE AND EXPEDITED SCHEDULING ORDER FOR 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 29<sup>th</sup> day of July, 2011.

/s/ Robert R. Marcus  
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Robert R. Marcus  
*Attorney for Plaintiff*