

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION
CIVIL ACTION NO. 3:11-CV-00371-RJC-DCK

US AIRWAYS, INC.,

Plaintiff,

v.

US AIRLINE PILOTS ASSOCIATION and
MICHAEL J. CLEARY,

Defendants.

**PLAINTIFF’S MOTION FOR A
TEMPORARY RESTRAINING ORDER**

Plaintiff US Airways, Inc. (“US Airways”) moves this Court for entry of a temporary restraining order against Defendants US Airline Pilots Association (“USAPA”) and Michael J. Cleary (“Cleary”) (collectively, “Defendants”), until such time as a hearing can be held on Plaintiff’s Motion for a Preliminary Injunction, and in support of its Motion states the following:

1. US Airways requests the entry of a temporary restraining order prohibiting Defendant USAPA, which represents pilots at US Airways, Cleary, and all persons acting in concert therewith, including all its individual members, from calling, permitting, instigating, authorizing, encouraging, participating in, approving, or continuing any form of interference with US Airways’ airline operations, including, but not limited to, any slowdown, work stoppage, strike, sick-out, work to rule campaign, concerted refusal to accept voluntary or overtime flight assignments, or other concerted refusal to perform normal pilot operations in violation of the Railway Labor Act, 45 U.S.C. § 151 *et seq.* (the “RLA”).

2. US Airways is likely to succeed on the merits of its claims that Defendants are violating the RLA.

3. Unless this Court issues a temporary restraining order restraining Defendants from the actions described below, US Airways will suffer immediate and irreparable damage in the form of damage to its business reputation and customer goodwill, increased costs for measures designed to avoid flight delays and cancellations, and loss of revenue and associated costs caused by flight delays and cancellations, none of which may be recoverable from Defendants and much of which can never be recovered. It further appears that unless such activity is restrained, the travel plans of large numbers of US Airways' customers will be disrupted, and the public will be deprived of transportation services, causing serious and substantial damage to the public interest.

4. Defendants will suffer minimal, if any, injury from a temporary restraining order against unlawful job actions.

5. The interests of the public will be served by enjoining job actions that have the effect of impeding the public's right to travel and the expectation of timely travel.

6. Greater injury will be inflicted upon US Airways if a temporary restraining order is denied than will be inflicted upon Defendants by the granting thereof.

7. Pursuant to Rule 65(B) of the Federal Rules of Civil Procedure, counsel for US Airways has attempted to contact the following counsel for Defendants via telephone and has left voicemail messages with each giving them notice of this motion. Counsel for US Airways is also notifying counsel for Defendants of this motion via e-mail.

8. In further support of this Motion, US Airways is filing a supporting brief in accordance with Local Rule 7.1(C).

WHEREFORE, Plaintiff requests that the Court issue a temporary restraining order against Defendants.

This the 8th of August, 2011.

/s/ Robert R. Marcus

Robert R. Marcus
N.C. State Bar No. 20041
Jonathan P. Heyl
N.C. State Bar No. 25559
C. Bailey King, Jr.
N.C. State Bar No. 34043
SMITH MOORE LEATHERWOOD LLP
525 N. Tryon Street, Suite 1400
Charlotte, North Carolina 28202
Telephone: (704) 384-2630
Facsimile: (704) 384-2800
E-mail: rob.marcus@smithmoorelaw.com
jon.hey@smithmoorelaw.com
bailey.king@smithmoorelaw.com

O'MELVENY & MYERS LLP:

Robert A. Siegel
Michael G. McGuinness
400 South Hope Street
Los Angeles, California 90071
Telephone: (213) 430-6000
Facsimile: (213) 430-6407
E-mail: rsiegel@omm.com
mmcguinness@omm.com

Mark W. Robertson
Times Square Tower
7 Times Square
New York, New York 10036
Telephone: (212) 326-2000
Facsimile: (212) 326-2061
E-mail: mrobertson@omm.com

Attorneys for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that the foregoing document has been duly served on Defendants US Airlines Pilots Association and Michael J. Cleary electronically (via facsimile and e-mail), by depositing a copy in the United States Mail, first class, postage prepaid, addressed to the following counsel of record, and by utilizing the Case Management/Electronic Case Filing System, which will send notice electronically to the following counsel of record:

John W. Gresham
Tin Fulton Walker & Owen, PLLC
301 East Park Avenue
Charlotte, NC 28203

Patrick J. Szymanski
Patrick J. Szymanski, PLLC
1900 L Street, NW, Suite 900
Washington, D.C. 20036

In addition, a courtesy copy of the foregoing document has been served on Defendants electronically (via facsimile and e-mail) and by depositing a copy in the United States Mail to the following counsel for Defendants:

Gary Silverman
O'Dwyer & Bernstein, LLP
Paul O'Dwyer Way
52 Duane Street
New York, NY 10007

This the 8th day of August, 2011.

/s/ C. Bailey King, Jr. _____
C. Bailey King, Jr.
Attorney for Plaintiff