

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NORTH CAROLINA

-----X
US AIRWAYS, INC.,

11-CV-371 (RJC)(DCK)

Plaintiff,

-against-

US AIRLINE PILOTS ASSOCIATION and
MICHAEL J. CLEARY,

**SECOND DECLARATION
OF MICHAEL CLEARY**

Defendants.
-----X

MICHAEL J. CLEARY, declares as follows under penalty of perjury pursuant to 28

U.S.C. § 1746:

1. Following the hearing today I reviewed my correspondence with US Airways in April 2011.
2. Contrary to the representation of counsel for US Airways, I received no letter from US Airways in April, or otherwise, that advised or threatened to bring any legal action against the USAPA.
3. Attached as Exhibit A is the letter I received from US Airways in April 2011 and my reply to that letter.

I declare under penalty of perjury that the foregoing is true and correct. Executed on August 12, 2011.

Dated: August 12, 2011
Charlotte, NC


MICHAEL J. CLEARY

CERTIFICATE OF SERVICE

I certify that I have this day served the foregoing **Second Declaration of Michael Cleary** on all of the parties to this cause by:

- Hand delivering a copy hereof to the attorney for each said party addressed as follows:
- Depositing a copy hereof with a nationally recognized overnight courier service, for overnight delivery, addressed to the attorney for each said party as follows:
- Transmitting via facsimile transmission a copy hereof to the attorney for each said party as follows:
- Electronic transmission (e-mail) to the attorney for each said party as follows:
- Depositing a copy hereof in a first-class, postage-prepaid, properly-addressed wrapper in a post office or official depository under the exclusive care and custody of the United States Postal Service, addressed to the attorney for each said party as follows:

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.heyl@smithmoorelaw.com
bailey.king@smithmoorelaw.com

Robert A. Siegel
Michael G. McGuinness
O'Melveny & Myers, LLP
400 South Hope Street
Los Angeles, CA 90071
Telephone: (213)430-6000
Facsimile: (213)430-6407
E-Mail: rsiegel@omm.com
mmcguinness@omm.com

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

This, the 12th day of August, 2011.

/s/ John W. Gresham
Attorney for Defendants

Exhibit A



U-S AIRWAYS

4000 E. Sky Harbor Blvd.
Phoenix, AZ 85034
480.693.0800

E. Allen Hemenway
Vice President, Labor Relations

April 28, 2011

Captain Michael J. Cleary
President
US Airline Pilots Association
5821 Fairview Road, Suite 400
Charlotte, NC 28209

Sent via certified mail, US mail and facsimile

Re: Status Quo Violations

Dear Captain Cleary:

We recently learned of two campaigns aimed at persuading pilots to engage in concerted action to disrupt US Airways' operations. We demand that USAPA take immediate steps to stop this unlawful activity as required by the Railway Labor Act.

The first campaign seeks to persuade pilots not to finish their "Distance Learning" training module required by the FAA until the last day of the deadline (May 31, 2011), and is being implemented through recorded calls and personal calls to pilots. As you know, if pilots collectively refuse to finish this training until the last day of the deadline, US Airways will be forced to cancel flights.

The second campaign is under the guise of safety and seeks to persuade pilots collectively to, among other things, delay calling for taxi clearance, slow taxi aircraft, write up minor discrepancies, drop flights through the schedule adjustment process, and call in sick and/or fatigued. This campaign is being implemented through e-mails and telephone calls. As you know, if pilots collectively engage in this behavior, it will result in flight delays and/or cancellations.

Under the Railway Labor Act, USAPA has a statutory obligation to do everything reasonably possible to prevent and discourage these unlawful job actions. US Airways demands that USAPA comply with its legal obligations and take immediate steps to ensure that there are no disruptions to US Airways' operations.

Sincerely,

E. Allen Hemenway
Vice President, Labor Relations

- c: D. Parker
- S. Kirby
- S. Johnson
- R. Isom
- E. Bular
- L. Hogg

04/28/11 09:20 FAX

May 10, 2011

E. Allen Hemenway
Vice President, Labor Relations
US Airways, Inc.
4000 E. Sky Harbor Blvd.
Phoenix, AZ 85034

Dear Al,

I am in receipt of your letter dated April 28, 2011, in which you allege that there are "two campaigns aimed at persuading pilots to engage in concerted action to disrupt US Airways' operations." Your letter states that the first "campaign" relates to the scheduling of "Distance Learning" training modules. The second relates to safety issues that may result in flight delays and/or cancellations.

It is not USAPA's policy to direct its members to collectively schedule their Distance Learning for the purpose of disrupting the Company's flight schedule. We have posted a message on the Union's website advising pilots that USAPA does not endorse any concerted action in this regard and directing our members to refrain from engaging in any effort of the nature alleged in your letter. If you can provide us with substantive evidence identifying specific pilots who are promoting concerted activity of this nature, we will address the issue with them on an individual basis.

Safety is another matter.

US Airways CEO Doug Parker has stated that air travel has become a fungible commodity and that our customers have only two interests: avoiding travel delays and price. Because safety requires an investment of time and money, there is an inherent conflict between safe operations and the blind pursuit of this narrow view of customer interest. With disturbing and increasing frequency, safety seems to come out on the losing end at our airline.

US Airways VP of Safety and Regulatory Compliance Paul Morell cites official policy to the effect that, "If the captain is dissatisfied with any aspect [of operations] ... the operation will stop until he is completely satisfied."

Vice President of Flight Operations Lyle Hogg has testified that US Airways pilots "have a duty to bring forward any safety concerns that they have identified or that they may have."

The Company's actions, however, belie these stated policies:

- Pilots have been subject to interrogation for requesting additional fuel;
- Pilots are subject to intimidation and disciplinary interviews when they decline to fly due to ill health or fatigue;

- Pilots receive disciplinary letters citing the Company's displeasure with reports of safety-related maintenance issues.

Moreover, pilots find themselves increasingly isolated due to US Airways' intimidation of other employee groups whose performance evaluations are primarily driven by delay avoidance. Dispatchers are encouraged to dispute pilot operational decisions. Flight Attendants interrupt pilots' checklist reviews. Gate Agents press for premature pushbacks. Under this relentless pressure from both managers and co-workers, cutting corners on safety becomes the path of least resistance.

One unfortunate way in which US Airways has distinguished itself from other airlines is in its refusal to engage in the joint labor-management Safety Culture Indicator Scale Measurement System Survey conducted by Dr. Terry von Thaden and the Illumia Corporation – or to even sign the necessary non-disclosure documents in order to obtain the results of the Safety Culture Survey (SCS). Management's boycott of the SCS process serves to reinforce Dr. von Thaden's conclusions that US Airways' safety culture has suffered from erosion and is in need of intervention. Particular problem areas identified by the SCS in its Executive Summary include:

- The pressure for profitability, which has led to cutting corners and poor scheduling practices;
- Pilots' feel[ing] pressed to push in areas where it would be better to slow down;
- Pilots' personal safety and comfort is not seen as a leadership concern; and
- Problems with pushing for on-time departure which may hinder safety.

The SCS cites "numerous" pilot reports that they have "little authority to assess or exercise their own fitness for duty." One survey respondent advises: "Every pilot I know flies fatigued and occasionally unfit" due to the Company's "punitive sick policy."

Substantial flight delays result in visits from management representatives to "pressure pilots to fly aircraft they would rather not." One respondent confesses: "I get physically sick to my stomach when I have to come to work because of stress, I guess."

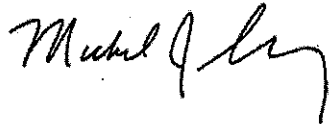
None of these SCS findings came as a surprise to USAPA. We are pilots and we experience the daily struggle not to yield to the path of least resistance – on-time performance at any cost.

Because of the Company's stark refusal, communicated by Mr. Morell, to give any consideration to this decline in US Airways' safety culture, it falls to USAPA to emphatically remind the pilots that, yes, they have a right *and an obligation* to engage in safe taxiing procedures, report maintenance discrepancies, reject aircraft that they don't consider to be airworthy, and to not fly when they are sick or fatigued. To the extent that US Airways pushes pilots into the yellow with its flawed safety culture, it is USAPA's objective to lead our pilots into the green. This is our duty to our families, our fellow employees and the traveling public. We in the past year have seen the tragic results in of pilots flying aircraft under less than optimal conditions. Whatever contractual issues we have with US Airways, and they are substantial, pale in significance to and are completely irrelevant to USAPA's duty to protect its members from harm.

If you have specific evidence that USAPA members are promoting certain operational practices for the purpose of disrupting the Company's schedule, provide us the evidence and we will take remedial

action. But your broad-based effort to discourage us from our safety objectives – particularly in the aftermath of US Airways’ refusal to participate in or review the SCS and the lessons learned from the consequences of flying under unsafe conditions – is unacceptable. Safety needs to be our primary concern and the passenger public needs to be secure in the knowledge that US Airways pilots have safety as the foremost consideration. Rather than attempting to intimidate this organization to refrain from protecting its members and the traveling public, we invite you once again to join us in a joint effort to maximize the safe flying conditions that our members expect and the traveling public deserves.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael J. Cleary". The signature is fluid and cursive, with a prominent initial "M" and a long, sweeping tail.

Captain Mike Cleary
President
US Airline Pilots Association