

IN THE UNITED STATES DISTRICT COURT
 WESTERN DISTRICT OF NORTH CAROLINA
 CHARLOTTE DIVISION
 CIVIL NO. 11-CV-371 (RJC)(DCK)

US AIRWAYS, INC.,)	
)	
Plaintiff,)	SECOND SUPPLEMENTAL DECLARATION OF
)	MICHAEL J. CLEARY
vs.)	CONCERNING
)	COMPLAINCE
US AIRLINE PILOTS ASSOCIATION)	
And MICHAEL J. CLEARY,)	
)	
Defendants.)	

MICHAEL J. CLEARY, declares as follows under penalty of perjury pursuant to 28 U.S.C. § 1746:

1. I am the President of the US Airline Pilots Association (hereinafter referred to as “USAPA” or “the Union”) and have served in this capacity from April 18, 2009 to date. I submit this declaration to inform the Court of additional communications issued by the USAPA in compliance with the Court’s Memorandum and Order of September 28, 2011.

2. On September 30, I read the Court’s Order to the pilots attending the DCA Domicile meeting. On October 2, the DCA Domicile issued by electronic mail the update attached as Exhibit 1 to the pilots based out of the DCA Domicile.

3. On October 11, I read the Court’s order to the pilots attending the PHL Domicile meeting. On October 18, the PHL Domicile issued by electronic mail the update attached as Exhibit 2 to the pilots based out of the PHL Domicile.

4. On October 17, USAPA sent the Questions and Answers attached as Exhibit 3 by electronic mail to our pilots and posted the Questions and Answers on the password protected portion of the USAPA webpage.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on October 19, 2011 in Charlotte, North Carolina.



MICHAEL J. CLEARY



DCA@usairlinepilots.org

Washington Domicile Update

October 2, 2011

Urgent DCA Domicile Update

Fellow DCA pilots,

As you are all aware, the United States District Court of the Western District of North Carolina ruled in favor of the plaintiff, US Airways, in their motion for a Preliminary Injunction against USAPA on Tuesday September 27th. We have attached this entire 45 page document as a file onto this update and we **highly encourage you to read the complete ruling**. Much more information will be forthcoming as to the implications that this Preliminary Injunction will have upon our Union, but for now, we strongly believe that we need to share the two pages of the Court Order with each of you. This Order describes the requirements which must be strictly complied with by USAPA, its leadership, and all of us individually. Please read the following, from the conclusion of the ruling, very carefully:

IV. CONCLUSION

For the foregoing reasons, this Court finds that Plaintiff has sufficiently demonstrated the

necessity of a preliminary injunction to prevent the actual and imminent irreparable harm posed by USAPA's actions. Therefore, the Court GRANTS Plaintiff's Motion for Preliminary

Injunction (Doc. No. 10) against USAPA and HEREBY ORDERS:

1. USAPA and its members, agents, and employees, and all persons and organizations acting by, in concert with, through, or under it, or by and through its order, are enjoined from permitting, instigating, authorizing, encouraging, participating in, approving, or continuing any interference with Plaintiff's airline operations, including, but not limited to, any slowdown, strike, work stoppage, sick-out, work to rule campaign, or any concerted refusal to perform normal pilot operations in violation of the RLA, pending a hearing on the permanent injunction.

2. USAPA shall take all reasonable steps within its power to prevent the aforesaid actions and to refrain from continuing the aforesaid actions if commenced, including, but not limited to, the following:

a. Instructing all pilots represented by USAPA and employed by Plaintiff to resume their normal working schedule and practices and providing Plaintiff a copy of all such instructions;

b. Notifying all pilots represented by USAPA and employed by Plaintiff, by the most expeditious means possible, of the issuance, contents, and meaning of this Preliminary Injunction and providing Plaintiff a copy of all such notices;

c. Including in such notice a directive from USAPA to US Airways' pilots who are engaging in a concerted refusal to perform normal pilot operations, including but not limited to, slow taxiing, writing up all maintenance items, calling in fatigued, delaying flights, refusing to answer a call from the scheduling, refusing to fly an aircraft that meets the requirements for flight, or refusing to accept voluntary or overtime flying, to cease and desist all such activity and to cease and desist all exhortations or communications encouraging same.

d. Posting the notice described above on Defendant USAPA's internet websites and providing Plaintiff a copy of the notices;

e. Including the contents of such notice on any and all recorded telephone hotlines under control of USAPA, until such time as the Court has acted on Plaintiff's Motion for a Permanent Injunction, and providing Plaintiff a copy of all such messages; and

f. Distributing the contents of such notice through all non-public communication systems maintained by USAPA, including any telephone trees, text message lists, pilot-to-pilot communication systems, or similar systems, and providing Plaintiff a copy of the notices.

3. USAPA is prohibited from including in such notices (or distributing contemporaneously with such notices) any statements that are intended or could reasonably be interpreted to mean that pilots should continue to engage in the previously-described conduct notwithstanding the Preliminary Injunction.

4. USAPA shall report to the Court by 5 p.m. on October 4, 2011, by sworn affidavit, the methods used to effect the notice described above to all USAPA-represented pilots, and furnish to the Court copies of all notices required to be furnished to the Plaintiff under the Court's Order.

We cannot stress enough, the importance of our full and complete compliance with all parts of this Order, however we also need to clarify that we are still to exercise our rights and duties as Pilots in Command to ensure the safety of our passengers and equipment, as is exhibited by the following statement included by Judge Conrad in the ruling:

3) The balance of the equities tips in favor of US Airways.

Because USAPA is engaged in an illegal slowdown, the balance of equities clearly tips in favor of US Airways. On one side, rests the enormous disruption and harm to US Airways and the traveling public, while on the other side, rests no legally cognizable harm to USAPA because an injunction would only require it to satisfy its existing legal duty under the RLA. To the extent that USAPA is concerned that an injunction would hamper its legitimate safety efforts, this Court declares that it in no way intends to interfere with the duty of pilots in command to ensure the safety of their passengers and equipment. The court's injunction therefore should not dissuade good faith efforts to ensure the safe operation of the airline.

To emphasize the gravity of this Order at our Domicile meeting on Friday September 30th, Joe read the two-page conclusion in its entirety immediately after calling the meeting to order. When President Cleary later addressed our pilots at this same meeting, he also read the complete Order a second time, to ensure that anyone joining the meeting late had the opportunity to hear their requirements and understand the importance of their compliance.

Accompanying Mike Cleary was attorney Pat Szymanski, who addressed our membership and answered

questions related to the ruling and order, and our obligations in compliance.

Your Union will comply fully with this Order and we strongly condemn any breaches of its compliance. More information and clarification can be expected next week. For now, we ask that you stay focused on your duties and responsibilities as professional airline pilots and that you utilize good sound judgment in all of your actions. We appreciate your attention to this important matter and your understanding of its significance to our Union and to each of us.

Fraternally,

Joe Stein
DCA Chairman
jstein@usairlinepilots.org

Pete Dugstad
DCA Vice Chairman
pdugstad@usairlinepilots.org

To adjust your email preferences or to opt out of communications, please visit the [My Settings](#) section of the website.

Copyright 2011 - US Airline Pilots Association
200 East Woodlawn Road, Suite 250, Charlotte, NC 28217
Phone Message: 877-332-3350 | Office: 704-936-4500 | Toll-free: 877-332-3342



PHL@usairlinepilots.org

Philadelphia Domicile Update

October 18, 2011

PHL Domicile Update

Philadelphia Pilots,

Our latest Philadelphia Domicile Meeting was held Tuesday, October 11, and for those of you who could not attend, this will serve as a brief summary.

After an opening and general overview by PHL Chairman Steve "Spike" Szpyrka, President Mike Cleary read the Order issued by the United States District Court and gave a very detailed briefing (along with attorney Pat Szymanski) on the Preliminary Injunction. President Cleary emphasized the need to strictly comply with the terms of the injunction. Included in this update is a link to President Mike Cleary's message sent to all pilots on Monday, October 17. The message highlights important questions and answers concerning the injunction. Please take the time to read this message, especially noting that you *can be held accountable as an individual pilot!* As stated in President Cleary's letter, "the request for clarification/modification will be filed within the next few days and we expect the Court will act promptly on the motion. Discovery would take several months and we would not expect a trial on the merits to be scheduled until April of next year at the earliest."

[Click here](#) to read the full Injunction Q & A.

Captain Cleary then addressed the International Brotherhood of Teamsters (IBT) and their interest in strengthening our alliance with their organization. At the direction of the BPR, he has appointed an ad hoc committee to develop a list of questions for the Teamsters. Within 30 days of the return of the questionnaire, Captain Cleary will call for a face-to-face meeting to be held in the CLT Airport Terminal Conference Room, inviting the IBT Airline Division president to make a formal presentation to the BPR and attending pilots. This presentation is to be followed by a full question and answer session, which will provide the BPR and membership an opportunity to explore all the benefits and consequences of closer ties and a possible merger with the Teamsters.

Captain Cleary then briefly touched on LOA 93. It is obvious that we are all extremely anxious for an answer as soon as possible, and he stated that Arbitrator Kasher has been made aware of this.

Vice President Randy Mowrey spoke briefly on the Preliminary Injunction and cautioned all pilots to obey the judge's directive. In other matters, his perception is that the LOA 93 decision is coming soon. He said "soon" could be relative based on the current time frame of waiting for almost two years since it's expiration.

Captain Mowrey closed with a statement on the disappointment by all of us in regard to the slow pace of

contract negotiations, but he once again reiterated the need for pilots to act accordingly with regards to the Preliminary Injunction.

Representing Human Intervention (HIMS), HIMS Consultant Captain Steve Javaras (Ret.) gave a presentation of the history of HIMS and recent HIMS hot topics. He spoke of the FAA's latest policies on DUI. Below is a copy of Federal Air Surgeon, Dr. Frederick Tilton's aeromedical advisory on DUI that Steve addressed.

Dealing with DUI

I know we all agree that alcohol has no place in aviation. That's why the Airman Medical Application Form 8500-8 includes a question about any arrest or conviction "involving driving while intoxicated by, impaired by, or while under the influence of alcohol or a drug." The FAA also requires airmen to report a DUI arrest or conviction to its Security and Investigations Division within 60 days of its occurrence.

Last year, in response to a 2007 National Transportation Safety Board (NTSB) Safety recommendation, the FAA modified its policy for DUI reporting. The previous policy only required detailed documentation if an airman had more than one:

- DUI,*
- alcohol related/drug arrest, or*
- conviction.*

The revised policy requires an airman with a single DUI arrest or conviction to provide a complete copy of the arrest report and/or court records to his or her Aviation Medical Examiner (AME) so that the AME can determine whether there might be a substance abuse or dependence problem. If the records indicate a recorded blood alcohol content (BAC) of .15 or greater, or if the AME believes that the airman has a substance abuse or dependence problem, he or she must defer the application decision to the Aerospace Medical Certification Division (AMCD) in Oklahoma City.

Note: *If an airman's BAC is .20 or higher, the Office of Aerospace Medicine will require additional information because a BAC of .20 or greater implies alcohol tolerance, which in-turn implies alcohol dependence.*

What to Bring

Here are some of the items an airman with a DUI should bring to his or her next aviation medical examination. The AME (or the AMCD) also has discretion to require additional information or documentation if they deem it necessary.

- All court records*
- Arrest records (including all statements by the arresting officer, field sobriety test results, etc.)*
- Results of any BAC determinations (breathalyzer or actual blood test)*
- Any medical evaluations done in connection with the incident*
- A written statement describing the event in the airman's own words*

*We would all prefer that such policies were not necessary, and I sincerely hope you will never need to use the information in this column. However, I believe that this policy helps to make the national airspace safer, and that is the most important consideration. **Fly SAFE!***

Captain Javaras closed with a reminder that any time you have a question on taking prescription or OTC

medications, please contact Harvey Watt at 800-241-6103.

Next, Co-Chairmen Dave Westberg and Dave Koseruba of the PIC explained our current court proceedings that are starting to move after many months of preparation. They are both very encouraged by the support we are beginning to see from many key congressmen. They also presented an in-depth accounting of the PIC's budget. We strongly encourage you to read the PIC's recent update, which may be found in the [Pension Investigation Committee Update](#) section of the members' site. Please help the PIC by submitting a short story (200 words or less if possible) to nopension@USAirlinepilots.org conveying how you have been impacted by the loss of our pension. Your story should relate directly to effects of our pay cuts, pension loss and work rules. *"This information, which would be strictly confidential and de-identified, would provide invaluable information to both your Pension Investigation Committee and Government Affairs Committee as they tell your story to the numerous legal and legislative people that can directly affect your future! This information is desperately needed ASAP!"*

Negotiation Advisory Committee (NAC) Chairman Paul DiOrio then presented his committee's update. As Captain DiOrio stated, we have not moved off of our "industry-standard" contract stance, but the Company continues to say "no" at every juncture. We have even tried to meet some of Company's criteria by changing our numbers, but when we return to the bargaining table, they change *their* numbers! His frustration, along with yours and ours, was *and is* plainly visible. Once again, the NAC feels strongly that part of the slow pace of negotiations is due to the demonstrated relationship that the Company negotiator, Jerry Glass, has with the White House.

The meeting adjourned at approximately 2:30 with about 40 pilots in attendance. We would like to thank all of the pilots who made the effort to attend.

Final Thoughts

Your Philadelphia reps are reminding you as a group, and as individuals, to please adhere closely to the Preliminary Injunction issued by Judge Conrad. That being said, Captain Jordan met briefly with Chief Pilot Jim Corbusier last week and expressed our desire to comply with the injunction. Captain Corbusier stated that he has had several pilots call his office and ask about certain write-ups, including "fumes in the cabin," asking if that was "okay" to put in the logbook. He asks that we use common sense, and if something needs written up, then by all means, write it up.

We are looking at the possibility of having a November Domicile Meeting due to the many issues facing the union which require your awareness and your active input.

Fraternally,

Spike

Eric

Mike

To adjust your email preferences or to opt out of communications, please visit the [My Settings](#) section of the website.

Copyright 2011 - US Airline Pilots Association
200 East Woodlawn Road, Suite 250, Charlotte, NC 28217
Phone Message: 877-332-3350 | Office: 704-936-4500 | Toll-free: 877-332-3342



President's Update - Injunction Q and A

Fellow Pilots,

We have received numerous questions about the Injunction issued by the United States District Court, including many questions about whether it changes a pilot's obligations under the Federal Aviation Regulations, the Flight Operations Manual and the applicable Pilot Handbook. With the help of USAPA Legal, we have distilled and consolidated the questions and have developed answers that we believe are consistent with the Court's order. The questions and answers are below. We will provide further information when the Court issues a decision on our motion to clarify its Order. We are also including a set of Q and A's concerning the procedural litigation steps that lie ahead.

What should I do if something is wrong with my aircraft; and can I still write up a maintenance issue?

Section 121.563 of the Federal Aviation Regulations states that the "pilot in command shall ensure that all mechanical irregularities occurring during flight time are entered in the maintenance log of the airplane at the end of flight time." Section 4.18.9 of the Flight Operations Manual, "Difficulties or Deficiencies Noted During Flight," directs that pilots are to "Record any discrepancies in the logbook." USAPA does not understand that the Injunction permits or requires pilots to violate these directives. If there is something wrong with your aircraft you are required to enter it in the log book.

How do I comply with this injunction and the Federal Aviation Regulations and/or Company policies?

USAPA does not understand that the Injunction permits or requires pilots to violate the Federal Aviation Regulations, the Flight Operations Manual or the applicable Pilot Handbook. Pilots cannot, however, use these rules as a pretext to unnecessarily delay or cancel a flight, slowdown operations or otherwise interfere with normal flight operations.

Could I be held legally accountable if I write up a maintenance issue? Could I be fired?

USAPA does not believe that a pilot can be disciplined or otherwise penalized if she or he legitimately writes up a maintenance issue. Section 4.18.9 of the FOM, "Difficulties or Deficiencies Noted During Flight," directs that pilots are to "Record any discrepancies in the logbook." The fact is that you can be held accountable if you fail to fulfill your obligations under the Federal Aviation Regulations, Flight Operations Manual, or Pilot Handbook. However, you cannot use these rules and regulations as an excuse to unnecessarily interfere with normal flight operations or to engage in any slowdown or other work stoppage.

Could I be fired if I call off a trip because I'm fatigued?

On page 42 of its Memorandum and Order, the Court "declares that it in no way intends to interfere with the duty of pilots in command to ensure the safety of their passengers and equipment" and that "the court's injunction therefore should not dissuade good faith efforts to ensure the safe operation of

the airline." USAPA understands this to mean that the injunction is not to be construed to require you to violate the Federal Aviation Regulations, Flight Operations Manual, or the applicable Pilot Handbook. Section 2.1.1 of the Flight Operations Manual states: Flight crewmembers will not report for duty when . . . fatigued." Section 13.7.5 states that "it is ultimately the individual pilot's responsibility to determine their level of fatigue and ability to safely remain on duty. Any pilot who is too fatigued to fly must . . . contact Crew Scheduling immediately." Therefore, if you are fatigued so that accepting a flight would endanger passengers or equipment, you should so inform flight operations. If you are not fatigued, you may not call in fatigued. In short, these regulations do not allow any pilot to call in fatigued when he or she is not fatigued.

How should this injunction change my behavior?

If you were engaging in activity to interfere with normal operations, you must stop. Pilots must not engage in any slowdown, strike, work stoppage, sick-out, work to rule campaign or any concerted refusal to perform normal pilot operations in violation of the Railway Labor Act. In addition, pilots must not engage in any communication, words or actions designed to encourage or persuade other pilots to engage in any such actions. Each pilot is subject to the jurisdiction of the Court and is individually bound by and must obey the injunction. Any individual pilot who violates the injunction can be prosecuted for contempt of the order, can be held in contempt and can be individually fined or otherwise punished. You must fully perform your normal working schedule and must fully perform normal flight operations. You may not engage in or continue to engage in any slowdown or other interference with normal flight operations.

IMPORTANT NOTE: This bears repeating. Each individual pilot is subject to the jurisdiction of the Court and is individually bound by and must obey the injunction. Any individual pilot who violates the injunction can be prosecuted for contempt of the order, can be held in contempt and can be individually fined or otherwise punished. Every pilot must be sure to follow standard operating practices and normal flight operations. You may not engage in any slowdown or other interference with normal flight operations.

Regarding Litigation

What are the next steps of the legal process?

There are two. The first is that we will be asking the District Court to clarify/modify its order to make it clear that pilots are still required to obey the Federal Aviation Regulations, Flight Operations Manual and the Pilot Handbook; and in particular, must write up maintenance issues as those rules and regulations require, and must take appropriate action to ensure the safety of their passengers and equipment, including calling in fatigued when they are fatigued. USAPA has the right to appeal the District Court's decision to the United States Court of Appeals for the Fourth Circuit, and will decide whether to appeal only after the request for clarification/modification is decided.

The second step is a trial on the merits. The current injunction is a "preliminary injunction" issued as the result of an abbreviated hearing and before discovery. A preliminary injunction remains in place until the Court issues a decision on the Carrier's request for a permanent injunction; that decision comes only after a regular trial on the merits. Before trial, each party is entitled to seek discovery from the other side, or from third parties, to find information relevant to the dispute that can be presented at trial.

What is the timeline?

The request for clarification/modification will be filed within the next few days and we expect the Court will act promptly on the motion. Discovery would take several months and we would not expect a trial

on the merits to be scheduled until April of next year at the earliest.

Can we appeal?

USAPA can appeal the preliminary injunction and will decide whether to do so once the request for clarification/modification is decided.

Does the union owe damages as a result of the ruling? No.

Can the union and/or an individual be held in contempt of the injunction?

The Union and individual pilots can be held in contempt if they violate the injunction.

If so, what is the process?

In this situation, a contempt proceeding would begin with a petition filed by the Company alleging that either the Union, any of its officers or any pilot or group of pilots has violated the injunction and should be held in contempt. The Court would hold a hearing on the motion and, after hearing the evidence, decide whether the respondents (Union, officers or individual pilots) had, in fact, violated the injunction and, if so, what the remedy should be. The usual remedy for a first offense is a fine calculated in an amount designed (a) to compensate the Company for the damage resulting from the violation and (b) to deter future violations. In unusual situations, the Court might decide that the contempt is so serious that it should be treated as a criminal contempt, in which case the all the usual protections available in a criminal proceeding will apply.

Does the Order allow the Company to circumvent the discipline process?The Order does not allow the Company to circumvent the contractual investigation, hearing, discipline and grievance process.

Sincerely,



Captain Mike Cleary
President

To adjust your email preferences or to opt out of communications, please visit the [My Settings](#) section of the website.