

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION
3:11-cv-371-RJC-DCK**

US AIRWAYS, INC.,)
)
 Plaintiff,)
)
 v.)
)
 US AIRLINE PILOTS ASSOCIATION)
 and MICHAEL J. CLEARY,)
)
 Defendants.)
)
)
)

ORDER

THIS MATTER comes before the Court on Defendants US Airline Pilots Association (“USAPA”) and Michael Cleary’s (collectively “Defendants”) Motion to Alter or Amend September 28, 2011 Decision and Order. (Doc. No. 76).

On September 28, 2011, this Court entered a preliminary injunction against Defendants. (Doc. No. 72). The Court found that Defendants had encouraged a “concerted refusal to perform normal pilot operations.” (*Id.* at 43). The Court ordered Defendants, *inter alia*, to direct 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.

(*Id.* at 43-44).

Defendants argue that this portion of the Court’s injunction requires pilots to ignore maintenance problems, fly fatigued, and otherwise violate FAA safety regulations. (Doc. No. 77). This Court’s September 28 Order anticipated this argument and declared that:

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 insure the safety of their passengers and equipment. The court's injunction should not dissuade good faith efforts to ensure the safe operation of the airline.

(Doc. No. 72 at 42). The Court reiterates this declaration, but **DENIES** Defendants' motion to alter the preliminary injunction. As the Northern District of Illinois stated when faced with a similar argument:

The court trusts that all of the parties have the ability to distinguish between good faith efforts to address safety issues, including fatigue, and the use of safety as a pretext for an unlawful job action and, furthermore, that enjoining the job action will not dissuade any of the parties from good faith efforts to ensure the safe operation of the airline.

United Air Lines, Inc. v. Air Line Pilots Ass'n, Int'l, No. 08-cv-4317, 2008 WL 4936847, at *46 (N.D. Ill. Nov. 17, 2008).

IT IS, THEREFORE, ORDERED that:

1. Defendants' Motion to Alter or Amend September 28, 2011 Decision and Order, (Doc. No. 76), is **DENIED**; and
2. This Court's preliminary injunction, (Doc. No. 72), remains in place.

Signed: November 19, 2011



Robert J. Conrad, Jr.
Chief United States District Judge

