

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

US AIRWAYS, INC.)	
)	
Plaintiff,)	DEFENDANTS' MOTION TO VACATE
)	THE PERMANENT INJUNCTION
)	PURSUANT TO FED.R.CIV.P. RULE
)	60(B)(5)
v.)	
)	
US AIRLINE PILOTS ASSOCIATION)	
and MICHAEL J. CLEARY,)	
)	
Defendants.)	

Pursuant to Federal Rules of Civil Procedure Rule 60(b)(5), defendant US Airline Pilots Association (“USAPA”) hereby moves this Court, before the Honorable Robert J. Conrad, Jr., in the United States District Court, 235 Charles R. Jonas Federal Building, 401 West Trade Street, Charlotte, North Carolina, for an Order vacating the permanent injunction issued against USAPA on January 11, 2012 pursuant to Rule 60(b)(5) of the Federal Rules of Civil Procedure, and for such other relief as the Court deems just and proper. In further support of this Motion, defendants are filing a supporting memorandum of law in accordance with Local Rule 7.1(C). In support of this Motion, defendants respectfully show the Court as follows:

1. Plaintiff US Airways commenced this action on July 29, 2011, alleging that USAPA’s membership was engaging in an unlawful pilot slowdown campaign. At the time, the parties were engaged in bitter and long-standing Section 6 of the Railway Labor Act contract negotiations.

2. After a hearing, this Court granted plaintiff's motion for a preliminary injunction. Thereafter, the parties agreed and stipulated that rather than proceed with litigation the preliminary injunction should be converted into a permanent injunction and that a final judgment would be entered in favor of US Airways, and on January 6, 2012, the parties made a joint application for such relief. The joint motion was granted, and the preliminary injunction issued by the Court on September 28, 2011 was converted into a permanent injunction on January 11, 2012 and a final judgment entered in favor of US Airways on the same day.

3. USAPA has fully complied with the terms of the permanent injunction, and there have been no allegations that USAPA has violated any of its terms.

4. As of the time the preliminary injunction was entered in 2011, USAPA and US Airways had been engaged in protracted negotiations with respect to expired collective bargaining agreements. These Section 6 contract negotiations were stalled and pilots were working under terms of employment, including most critically, pay, that were significantly below industry standards due to various factors, including concessions made by the pilots to help US Airways emerge from bankruptcy. This labor dispute was a critical part of the Court's findings of fact in support of its determination that an injunction was required.

5. Two related events that have occurred since 2011 have significantly changed the factual underpinnings that supported the injunction: the merger of US Airways with American Airlines (which became effective on December 9, 2013), and the entry into a collective bargaining agreement (in February 2013) that significantly improves the terms and conditions of employment of US Airways pilots.

6. In April 2012, US Airways announced its intention to pursue a merger with American Airlines ("American"), which was in Chapter 11 bankruptcy proceedings in the United

States Bankruptcy Court for the Southern District of New York, *In re AMR Corp.*, Case No. 11-15463.

7. Soon thereafter, USAPA, US Airways, American, and APA (the collective bargaining representative for the American pilots) began negotiations for a Memorandum of Understanding regarding a Contingent Collective Bargaining Agreement (“MOU”). The MOU was executed by USAPA, US Airways, American and APA in or around February, 2013, and was overwhelmingly ratified by the USAPA membership.

8. The MOU sets forth the procedures to be used by the parties for reaching: (a) a Merger Transition Agreement (“MTA”) between APA and the New American Airlines; and (b) a joint collective bargaining agreement (“JCBA”) to apply to the merged American and US Airways pilots.

9. On December 9, 2013, when the merger went into effect, many of the terms and conditions of employment of the US Airways’ pilots became governed by the MTA, which consists of the 2012 APA/American collective bargaining agreement as modified by the MOU. The end result will be a JCBA that applies to the merged American and US Airways pilots.

10. On December 9, 2013, the Effective Date of the merger, pay and other benefits increased substantially for US Airways pilots as per the terms of the MOU and MTA. Pay for the US Airways pilots became equal to those provided to American pilots. The MOU provides for an industry average pay parity adjustment effective on January 1, 2016, which will bring pay for all the pilots of the merged airline into line with the two other major domestic carriers – Delta Airlines and United Airlines. In addition to the significant pay increases, there were also increases to the defined contribution plan, and “no furlough” guarantees. These benefits have all

been of paramount importance to the US Airways pilots in their struggle for an industry-standard contract.

11. USAPA has fully complied with the terms of the permanent injunction, and it is highly unlikely that the conduct the Court enjoined will occur in the future in light of the benefits conferred under the negotiated MTA and MOU. The successful bargaining of the MOU resolves the underlying dispute between USAPA and US Airways that the Court identified as the reason for USAPA's actions.

12. The injury to US Airways' operational performance that the Court found was a result of USAPA's conduct is no longer an issue. There are not now pending and have never been any allegations that USAPA violated the terms of the injunction or that US Airways has suffered any injury resulting from any acts or conduct by USAPA enjoined by the permanent injunction since entry of the injunction.

13. Given that the circumstances forming the basis of plaintiff's complaint seeking an injunction and the Court's findings underlying the entry of the permanent injunction are no longer at issue or in effect, the permanent injunction should be vacated.

This 18th day of March, 2014

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CERTIFICATE OF SERVICE

I certify that I have this day served the foregoing **Motion, Declaration of Patrick Szymanski in Support of Defendants' Motion to Vacate the Permanent Injunction, Declaration of Gary Hummel in Support of Defendants' Motion to Vacate the Permanent Injunction, and the Defendants' Memorandum of Law in Support of the Motion to Vacate the Permanent Injunction** 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:
- X 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:

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This, the 18th day of March, 2014.

s/ John Gresham
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