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 BRIEF IN OPPOSITION TO DEFENDANT'S MOTION TO VACATE THE PERMANENT INJUNCTION

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PRELIMINARY STATEMENT

In September 2011, this Court issued a preliminary injunction prohibiting defendant US Airline Pilots Association ("USAPA") and its members from engaging in unlawful slowdown activity in violation of Section 2, First, of the Railway Labor Act, 45 U.S.C. § 151 *et seq*. (the "RLA"). The Court found that USAPA was disrupting plaintiff US Airways, Inc.'s ("US Airways'") operations in order to put pressure on the airline in ongoing labor contract negotiations. On January 11, 2012, pursuant to stipulation of the parties, the Court converted the preliminary injunction to a permanent injunction. On that same date, the Court closed this matter and entered final judgment. Now, without any hint of how an injunction that does no more than require USAPA to obey the law is in any way harmful to USAPA's interests, and without explaining why it wants the injunction vacated at this particular time, USAPA claims that changed circumstances have eliminated any reason USAPA might have had for repeating its illegal conduct and disrupting US Airways' operations. That simply is not true.

Since the parties last appeared before this Court in January 2012, US Airways merged with American Airlines, Inc. ("American"). As part of the merger process, USAPA, US Airways, the collective bargaining representative for American's pilots, the Allied Pilots Association ("APA"), and American, entered into a Merger Transition Agreement ("MTA") and a Memorandum of Understanding Regarding Contingent Collective Bargaining Agreement ("MOU"). The MTA is a common collective bargaining agreement that covers pilots at both US Airways and American. Pursuant to the MOU, the MTA's increased rates of pay and retirement plan contributions were extended to the US Airways pilots on December 9, 2013. As a result, USAPA now claims that any motivation it might have to engage in unlawful slowdown activity has been removed, and it seeks to have the permanent injunction vacated on that basis.

But what USAPA fails to tell this Court is that the MOU also sets forth a process for negotiating a Joint Collective Bargaining Agreement ("JCBA"), *and that process is just now starting*. Indeed, simultaneously with telling this Court that all motivation for USAPA and its members to engage in illegal slowdown activity has been removed, in a February 19, 2014 filing with the National Mediation Board ("NMB"), USAPA argues that "[t]here are numerous provisions of the JCBA negotiations [*sic*] [that have yet to be agreed upon and] that will materially affect pay, rules and working conditions for pilots." USAPA then goes on to explain in its recent filing with the NMB that "[t]he USAPA negotiating committee is working with the APA negotiating committee to formulate joint proposals in the negotiations." Thus, USAPA *does have* a reason to violate the injunction, indeed, the very same reason that led to its illegal slowdown in the first place—and the timing of USAPA's motion on the eve of these negotiations suggests that is the true motive behind USAPA's motion.

Moreover, as this Court found when issuing the injunction, the injunction is necessary to protect US Airways and the traveling public while at the same time it poses "no legally cognizable harm to USAPA because [it] . . . only require[s] [USAPA] to satisfy its existing legal duty under the RLA." Under these facts, USAPA cannot satisfy its burden under Federal Rule 60(b)(5) to demonstrate that the injunction should be dissolved at this time.

For these reasons, USAPA's motion should be denied.

STATEMENT OF FACTS

A. US Airways' Complaint To Stop USAPA's Unlawful Slowdown Campaign

On July 29, 2011, US Airways filed its Complaint for Injunctive Relief and Motion for Preliminary Injunction under the RLA against USAPA and its officers and members to prohibit them from engaging in an ongoing, unlawful pilot slowdown campaign. (*See* Compl., ECF No.

1; Mot. for Prelim. Inj., ECF No. 10.) The purpose of USAPA's campaign was to cause nationwide flight delays and cancellations in order to put pressure on US Airways in the parties' collective bargaining negotiations. (*See* Compl., ECF No. 1 ¶ 1.) Among other things, under the guise of "safety," USAPA directly instigated the illegal slowdown campaign by encouraging pilots to delay flight departures, not complete certain training requirements, decline to fly on the basis of fatigue, increase maintenance write-ups, and generally slow down in the performance of their duties. (*See id.* ¶ 3.) USAPA's campaign significantly disrupted US Airways' operations and the travel plans of many thousands of members of the public. (*See id.* ¶ 1.) US Airways suffered a tarnished reputation in the marketplace, lost customer goodwill, and incurred substantial monetary losses. (*See id.* ¶ 90.)

B. <u>The Resulting Preliminary and Permanent Injunction</u>

This Court heard evidence and argument on US Airways' Motion for Preliminary Injunction on August 19 and 22, 2011, and found that USAPA's attempt to put pressure on US Airways in ongoing contract negotiations by disrupting operations was a violation of its status quo obligations under Section 2, First, of the RLA. *See US Airways, Inc. v. US Airline Pilots Ass'n*, 813 F. Supp. 2d 710, 731 (W.D.N.C. 2011). The Court specifically found that "USAPA has expressly tied the success of their 'fight' for a new contract to actions by their member pilots that would slow down the airline but could be cloaked by the safety campaign." *See id.* at 716.

As a result, this Court issued a preliminary injunction on September 28, 2011, enjoining the illicit conduct on the part of USAPA and its members. The preliminary injunction stated, in part:

> 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 . . . .

Id. at 737.

Shortly thereafter, on October 19, 2011, USAPA filed a motion to alter or amend the judgment, which the Court denied. (*See* Mot. to Alter or Amend Sept. 28, 2011 Decision & Order, ECF No. 76; Order, ECF No. 89.)

On January 6, 2012, the parties agreed and stipulated that the preliminary injunction should be converted into a permanent injunction. (*See* Joint Mot., ECF No. 90.) The parties did not agree that the injunction should terminate at a particular time or upon satisfaction of a particular condition. (*See id*.) Then on January 11, 2012, this Court ordered "[t]hat the Preliminary Injunction issued by the Court on September 28, 2011, be converted into a Permanent Injunction and that final judgment be entered in favor of US Airways." (*See* Order, ECF No. 91.) On that same date, the Court closed this matter.

C. The US Airways/American Merger

On February 13, 2013, AMR Corporation, which owned American, and US Airways Group, Inc. entered into an Agreement and Plan of Merger (the "Merger Agreement"), under which the former would acquire the latter, including its wholly-owned subsidiary US Airways. (*See* Decl. of Sloane Ackerman ("Ackerman Decl.") ¶ 2, Ex. 1 at 3.) Following governmental and shareholder approvals, the Merger Agreement became effective on December 9, 2013. (*See id*. ¶ 2, Ex. 1 at 4.)

D. The Merger Transition Agreement And Memorandum Of Understanding

American, US Airways, USAPA, and APA are parties to the MTA, which consists of the collective bargaining agreement approved on December 19, 2013 by the bankruptcy court in *In Re AMR Corporation, et al*., jointly administered Ch. 11 Case No. 11-15463 (SHL), as amended

by and pursuant to the provisions of the MOU. (*See id.* ¶ 2, Ex. 1 at 1.)

The MOU was entered in early 2013 in anticipation of the merger in order to facilitate the expeditious post-merger integration of the two pilot groups. (*See id.* ¶ 3, Ex. 2 at 1.) The pre-merger MOU was intended to ensure stable labor relations by establishing the majority of the terms and conditions of employment for pilots. (*See id.*) The parties agreed that increased rates of pay and retirement plan contributions would be implemented on the effective date of the plan of reorganization—December 9, 2013 (the "Effective Date")—and the remaining terms "shall be applicable to all US Airways pilots at the earliest practicable time for each such term." (*See id.* ¶ 2, Ex. 1 at 1.)

Given that the MTA is a modified form of the American-APA CBA, the parties recognized that, following the merger, they would inevitably have to work out further details regarding how the US Airways pilots would become covered by that collective bargaining agreement. (*See id.* ¶ 2, Ex. 1 at 8-9.) For that reason, the MOU sets forth an expedited negotiation and arbitration process for finalizing a JCBA to apply to the merged pilot groups—essentially, a process that allows for negotiation of post-merger amendments to the MTA. (*See id.* ¶ 2, Ex. 1 at 9.)

Pursuant to the MOU, negotiations for a JCBA "shall be conducted with USAPA and APA jointly, until such time as one union is certified by the NMB to be the collective bargaining representative of the combined pilot craft or class." (*See id.* ¶ 4, Ex. 3 ¶ 5.) And "[a]t that time, the duly-certified representative shall have exclusive authority to negotiate on behalf of the pilots with respect to the JCBA." (*See id.*)

The MOU provides that the negotiations for a JCBA will be completed no later than 30 days after the NMB determines that the combined US Airways/American operation constitutes a

single transportation system and certifies the collective bargaining representative for the single carrier's pilots. (*See id.* ¶ 4, Ex. 3 ¶ 27.) If the parties cannot reach agreement on a JCBA within the specified time frame, or the pilots do not ratify a negotiated JCBA, the MOU provides that the terms of the JCBA will be imposed through "final and binding" interest arbitration and that the arbitrator's award must be "consistent with the terms of the MTA" and "adhere to the economic terms of the MTA and shall not change the MTA's Scope terms (Paragraph 25 of [the MOU]) or the modifications generated through the process set forth in Paragraph 24 of [the MOU]." (*See id.*) The MOU requires that any arbitration award shall be issued within 60 days after the close of the 30-day negotiation period. (*See id.*)

E. Post-Merger Proceedings Before The National Mediation Board

The MOU provides that "APA shall file a single carrier petition with the NMB as soon as practicable after the Effective Date." (*See id.* ¶ 4, Ex. 3 ¶ 26.) On January 15, 2014, the APA filed its application—the first step in the process of the NMB certifying a single collective bargaining representative for all pilots. (*See id.* ¶ 2, Ex. 1 at 1.) The parties completed briefing in the matter before the NMB on March 17, 2014. (*See id.* ¶ 3, Ex. 2.) It is the Company's position that American and US Airways now operate as a single transportation system and thus, APA's application should be processed. (*See id.* ¶ 2, Ex. 1 at 2.)

In contrast, in its February 19, 2014 submission to the NMB, USAPA "submits that the record evidence will establish American Airlines, Inc. and US Airways, Inc. are not substantially integrated in operations, [and] have not achieved substantial integration of rates of pay, rules and working condition [*sic*] among the pilots of the carriers . . . ." (*See id.* ¶ 5, Ex. 4 at 1.) In support of its contention, USAPA argues that "[t]he Memorandum of Understanding/Merger Transition Agreement left open important subjects of pilot rates of pay, rules and working conditions for

subsequent negotiation and no implementation timetable exists for many of these important terms." (*See id.* ¶ 5, Ex. 4 at 11.)

USAPA further contends that "[t]he carrier's failure to implement several sections of the ratified MOU/MTA," "including pay related issues for US Airways Pilots," "is adversely affecting the ability to successfully engage in joint collective bargaining for a mandatory [JCBA]," and "[t]here are numerous provisions of the JCBA negotiations [*sic*] that will materially affect pay, rules and working conditions for pilots." (*See id.* ¶ 5, Ex. 4 at 12; ¶ 6, Ex. 5 ¶ 3.) USAPA further asserts in that filing that: "The USAPA negotiating committee is working with the APA negotiating committee to formulate joint proposals in the negotiations. The unions have not yet finalized the proposals that they will present to management in these negotiations." (*See id.* ¶ 5, Ex. 4 at 12; ¶ 6, Ex. 5 ¶ 3.)

USAPA also makes the same arguments in a March 31, 2014 supplemental filing with the NMB. (*See id.* ¶ 7, Ex. 6 at 10-12 (stating to the NMB that "the Joint Collective Bargaining Agreement remains to be negotiated").)

ARGUMENT

In its motion, USAPA seeks to have the injunction vacated pursuant to Rule 60(b)(5) of the Federal Rules of Civil Procedure, which provides that "the Court may relieve a party . . . from a final judgment, order, or proceeding" because "the judgment has been satisfied, released or discharged; it is based on an earlier judgment that has been reversed or vacated; or applying it prospectively is no longer equitable." *See* Fed. R. Civ. P. 60(b)(5). USAPA claims it is no longer equitable for the injunction—which merely requires USAPA and its members to comply with the RLA—to remain in effect. (*See* Mem. of Law in Supp. of Def.'s Mot. to Vacate the

Permanent Inj. ("USAPA's Br.") at 9-13.)[1]

"Relief under Rule 60(b) is an extraordinary remedy that is to be used only in exceptional circumstances . . . . To determine whether such exceptional relief is appropriate, the court must engage in the delicate balancing of the sanctity of final judgments, expressed in the doctrine of res judicata, and the incessant command of the court's conscience that justice be done in light of all the facts." *Clear Sky Car Wash, LLC v. City of Chesapeake*, No. 2:12-cv-194, 2013 U.S. Dist. LEXIS 53439, at *12 (E.D. Va. Apr. 12, 2013) (internal quotation marks and citations omitted) (denying the plaintiff's Rule 60(b) motion).

"The party seeking relief from an order on the grounds that the order is no longer equitable bears the burden of establishing that changed circumstances warrant relief." *Telesis Cmty. Credit Union v. Mantiff 1215 Statesville Hospitality LLC*, No. 5:09-cv-118, 2010 U.S. Dist. LEXIS 25772, at *2 (W.D.N.C. Mar. 5, 2010) (denying the defendant's motion to dissolve the preliminary injunction). "In order to grant a Rule 60(b)(5) motion to modify a prior order, the court must find a significant change either in factual conditions or in law." *Microstrategy, Inc. v. Business Objects, S.A.*, 369 F. Supp. 2d 725, 732 (E.D. Va. 2005) (internal quotation marks and citations omitted) (denying the defendant's Rule 60(b)(5) motion). "When making a motion under Rule 60(b), the party moving for relief must clearly establish the grounds therefor to the satisfaction of the district court . . . and such grounds must be clearly substantiated by adequate proof." *In re Burnley*, 988 F.2d 1, 3 (4th Cir. 1992) (internal quotation marks and citations omitted) (affirming the district court's decision denying the plaintiff's Rule 60(b) motion).

For the reasons detailed below, USAPA cannot not satisfy its burden.

[1] USAPA filed the instant motion without first meeting and conferring with US Airways as required by Local Rule 7.1(B).

A. USAPA Fails To Mention The Key Facts, Which Demonstrate That Dissolution Of The Injunction On The Eve Of JCBA Negotiations Would Be Premature

This Court found that USAPA's illegal slowdown campaign was "expressly tied" to "their 'fight' for a new contract." *See US Airways*, 813 F. Supp. 2d at 716. USAPA now claims that "the primary source of contention between the parties has been removed through the successful bargaining of the MOU." (*See* USAPA's Br. at 5.) But USAPA fails to inform the Court that JCBA negotiations are about to begin. (*See* Ackerman Decl. ¶ 5, Ex. 4 at 12; ¶ 6, Ex. 5 ¶ 3.) Indeed, while USAPA tells this Court that the source of contention between the parties has been resolved, it simultaneously argues to the NMB that that "[t]here are numerous provisions of the JCBA . . . that will materially affect pay, rules and working conditions for pilots." (*See id*. ¶ 5, Ex. 4 at 12.)

In this context, USAPA's motion to vacate the injunction must be reviewed with suspicion. USAPA's incomplete presentation of facts to this Court, coupled with its past behavior and the timing of its request to vacate the injunction on the eve of negotiations, creates a strong inference that USAPA is seeking the ability to engage in an illegal slowdown, just as it did in 2011, without the risk of incurring contempt sanctions for violation of this Court's injunction. This should not be permitted. *See Holiday Inns, Inc. v. Holiday Inn*, 645 F.2d 239, 242 (4th Cir. 1981) (denying defendant's motion for relaxation of an injunction in part because the defendant's "behavior in the past predicts what its conduct may, with reason, be expected in the future").

B. USAPA's Illegal Slowdown Campaign Only Ceased Because This Court Issued The Injunction USAPA Now Seeks To Vacate

USAPA claims that the injunction should be vacated because it "has fully complied with all the terms of the injunction." (*See* USAPA's Br. at 11.) But "compliance is what the law expects." *See Microstrategy, Inc.*, 369 F. Supp. 2d at 735. Moreover, because USAPA did not

stop its illegal slowdown *until* the Court issued the injunction, USAPA's compliance with the injunction is a reason for maintaining the injunction—not vacating it.

There is no doubt that the injunction was necessary to stop the slowdown and compel USAPA's compliance with the law. In response to numerous letters from US Airways urging USAPA to stop its illegal slowdown prior to initiating this litigation, USAPA did not stop its illegal slowdown but instead "vehemently denied that it was engaged in a slowdown." *See US Airways*, 813 F. Supp. 2d at 729. And when US Airways filed its complaint seeking an injunction, USAPA did not stop its illegal slowdown but instead inaccurately insisted that the disruption of operations was caused by other factors, such as weather delays, holiday travel, operational errors by air traffic controllers, the eruption of a volcano in Iceland, and an earthquake in Japan. (*See* Br. in Opp. to Pl.'s Mot. for Prelim. Inj., ECF No. 60 at 21-22.) The slowdown continued unabated and did not cease until this Court issued the preliminary injunction. And once the injunction was issued, the slowdown ceased immediately—demonstrating that the disruption to operations had been under USAPA's control from the beginning.

In this context, it is clear that USAPA's compliance with the law has occurred only because of the injunction, and that such compliance is not a reason to vacate the injunction on the eve of negotiations for the JCBA.

C. <u>The Injunction Merely Requires USAPA To Comply With The Law And Nothing Has Occurred That Would Make Compliance More Difficult</u>

In support of its motion, USAPA cites a number of cases that stand for the proposition that an injunction should be lifted when it poses an undue hardship on a party. *See, e.g.*, *Secs. & Exch. Comm'n v. Warren*, 583 F.2d 115, 118 (3d Cir. 1978) ("the permanent injunction was causing and would in the future cause undue hardship"); *Brennan v. Thor, Inc.*, 516 F.2d 999,

1000 (4th Cir. 1975) ("The district judge further found that the injunction . . . tended to interfere with the orderly conduct of its business."); *Tobin v. Alma Mills*, 192 F.2d 133, 136 (4th Cir. 1951) ("The continuance of the injunction was hampering the owners of the company in disposing of their stock and was accomplishing no useful purpose.")

But nowhere does USAPA assert that the injunction is imposing any hardship on the union or its members—nor can it. Rather, as this Court has recognized, the injunction poses "no legally cognizable harm to USAPA because [it] . . . only require[s] [USAPA] to satisfy its existing legal duty under the RLA." *See US Airways*, 813 F. Supp. 2d at 736-37; *see also United Air Lines, Inc. v. Air Line Pilots Ass'n, Int'l*, 185 L.R.R.M. 2562 (N.D. Ill. 2008) (injunction "merely requires them to satisfy their existing legal obligations under the RLA"), *aff'd*, 563 F.3d 257 (7th Cir. 2009); *Nw. Airlines, Inc. v. Local 2000, Int'l Bhd. of Teamster*s, 163 L.R.R.M. 2460 (D. Minn. 2000) (injunction "would simply prohibit the Defendants from engaging in illegal activity"). Accordingly, because USAPA "has not demonstrated that any significant, unforeseen change of fact or law has occurred that would make compliance with the injunction more difficult," the injunction should not be dissolved. *See Microstrategy, Inc.*, 369 F. Supp. 2d at 735.

D. Continuation Of The Injunction Does Not Require The Court To Expend Any Judicial Resources

USAPA also argues that "[c]ontinued enforcement would be detrimental to the public interest in that it would be a waste of judicial resources." (*See* USAPA's Br. at 13.) But from the time the permanent injunction was issued, this Court has not had to devote any resources to this matter for the simple reason that the injunction has remained in place and inhibited USAPA from repeating its unlawful activities. Indeed, final judgment was entered by the Court on the same day the permanent injunction was entered, and until USAPA filed the instant motion, there

had been no activity, and no expenditure of judicial resources, in this case.

E. Dissolving The Injunction Would Pose A Risk To The Traveling Public And Eliminate Any Risk To USAPA From Engaging In Illegal Conduct

As this Court held when issuing the preliminary injunction, USAPA's slowdown activities posed a risk of "enormous disruption and harm to US Airways and the traveling public," and "the central purpose of the RLA [i]s to protect the public from interruptions to transportation caused by labor disputes." *See US Airways*, 813 F. Supp. 2d at 736-37. The same remains true if USAPA were to revert to its slowdown activities during the JCBA negotiation process.

And if there is no injunction in place, a union violating the RLA's status quo provisions faces no monetary penalties—all the affected carrier can do is seek an injunction. *See, e.g.*, *Norfolk S. Ry. v. Bhd. of Locomotive Eng'rs*, 217 F.3d 181, 190-91 (4th Cir. 2000); *CSX Transp. Inc. v. Marquar*, 980 F.2d 359, 382 (6th Cir. 1992). Here, vacating the injunction would have only a single effect—USAPA would be free to recommence its unlawful slowdown campaign without fear of facing the contempt sanctions that have effectively constrained its conduct so far.

Under these facts, the Court "cannot find that continued enforcement would be in any way detrimental to the public interest." *See Microstrategy, Inc.*, 369 F. Supp. 2d at 736. Indeed, dissolution of the injunction could result in serious harm to the public.

F. The Passage Of Time Does Not Diminish The Need For The Injunction To Remain In Place

USAPA also claims that the injunction should be vacated, in part, because it has been in place for just over two years. (*See* USAPA's Br. at 10-11.) "The mere passage of time, however, is not a sufficient reason to terminate an injunction." *See Microstrategy, Inc.*, 369 F. Supp. 2d at 735; *see also Renoir v. Governor of Va.*, 755 F. Supp. 2d 82, 87 (D.D.C. 2010) ("A final or permanent injunction is perpetual in effect.") (citation omitted); *Chappell &*

Co. v. Frankel, 367 F.2d 197, 203 n.12 (2d Cir. 1966) ("The duration of a permanent injunction in theory is unlimited.") (citation omitted). USAPA relies on *Railway Labor Executives' Ass'n v. Wheeling & Lake Erie Railway Co.*, 756 F. Supp. 249 (E.D. Va. 1991), for the proposition that a one-year injunction may sometimes be sufficient to bar a union from engaging in self-help under the RLA. (*See* USAPA's Br. at 10.) But the court in *Wheeling* also made clear that a permanent injunction should remain in place "so long as there is a realistic risk that [a union] may resort to illegal self-help measures . . . ." 756 F. Supp. at 255. Here, that "realistic risk" continues throughout the JCBA negotiations process and beyond.

G. The Norris LaGuardia Act Has No Bearing On Whether The Injunction Should Be Vacated

USAPA cites the Norris LaGuardia Act (the "NLGA") in support of its motion to vacate, but none of the cases cited by USAPA suggest that the Court's analysis in assessing whether to vacate an injunction pursuant to Federal Rule 60(b)(5) is impacted by the NLGA. At most, the NLGA should be considered when a court is deciding whether to issue an injunction in the first place. And this Court previously considered USAPA's arguments and appropriately concluded that the "Preliminary Injunction is not Prohibited by the Norris-La Guardia Act." *See US Airways*, 813 F. Supp. 2d at 733.

CONCLUSION

For the reasons set forth above, this Court should deny USAPA's motion.

This the 4th of April, 2014.

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CERTIFICATE OF SERVICE

I hereby certify that the foregoing document has been duly served on Defendants US Airlines Pilots Association and Michael J. Cleary to the following counsel of record by utilizing the Case Management/Electronic Case Filing System, which will send notice electronically to the following counsel of record:

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