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October 12, 2012

Patrick J. Szymanski
PATRICK J. SZYMANSKI, PLLC
1900 L Street, NW, Ste. 900
Washington, DC 20036

Re: The Nicolau Award

Dear Pat:

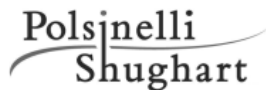
We now have Judge Silver's final Order and Judgment in the *US Airways, Inc. v. Don Addington, et al.* litigation. The Order and Judgment are quite informative. Judge Silver found that USAPA is bound by the Transition Agreement, a point USAPA has been disputing for a number of years. (See Order at pp. 6-7.) Judge Silver also found that when USAPA became the pilots' new collective bargaining representative, "it succeeded 'to the status of the former representative without alteration in the contract terms.'" (Order at p. 7.) Again, USAPA has been contending for years that it was not ALPA's successor. Finally, the Court unequivocally found that for USAPA to deviate from the Nicolau Award, it can do so only if the deviation is "supported by a legitimate union purpose." (See Judgment.)

In my opinion, the most instructive paragraph in the Order for everyone, USAPA, the East Pilots, the West Pilots and US Airways is found on page 8 of the Order. It reads in full as follows:

"Of course, in negotiating for a particular seniority regime, USAPA must not breach its duty of fair representation. Accordingly, if USAPA wishes to abandon the Nicolau Award and accept the consequences of this course of action, it is free to do so. By discarding the result of a valid arbitration in negotiating for a different seniority regime, USAPA is running the risk that it will be sued by the disadvantaged pilots when the new collective bargaining agreement is finalized. An impartial arbitrator's decision regarding an appropriate method of seniority integration is

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powerful evidence of a fair result. Disregarding the Nicolau Award places USAPA on dangerous ground.”

The Communication Committee just issued a release on Judge Silver’s order that is yet another example of USAPA’s failure to fully and fairly inform the pilots (both East and West) on this subject. This release totally ignores that Judge Silver made it very clear that USAPA takes great risk if it implements a contract that deviates from the Nicolau Award. The pilots deserve better.

The time has come for USAPA and the East Pilots to be fully and fairly informed about the status of the Nicolau Award and the significant risk USAPA runs if it deviates from that Award without legal justification. We understand that the leadership of USAPA and others, perhaps even including yourself, have been telling the East Pilots that USAPA is now free to either use or propose any seniority list it wants. Those statements are not true and it is time that USAPA and the East Pilots fully understand this.

The parties to the Transition Agreement agreed in advance that the Nicolau Award would be the final resolution of the seniority dispute. USAPA can deviate from the Nicolau Award if, and only if, the deviation is “supported by a legitimate union purpose.” USAPA has now had almost 50 months of litigation to propose a “legitimate union purpose” for deviating from the Nicolau Award. The reasons proposed by USAPA in the Addington trial were rejected by a civil jury. In the current *US Airways, Inc.* litigation, USAPA failed to come forward with an argument that was acceptable to Judge Silver for deviating from the Nicolau Award. The reason for USAPA’s failure is that there is no “legitimate union purpose” for deviating from the Nicolau Award. There never has been and there never will be.

This in fact is the current state of affairs and USAPA and the East Pilots need to understand that. This will pose grave problems for USAPA when it restarts negotiations with US Airways pursuant to Section 6 of the RLA. It will also be a looming problem for USAPA if the merger with American Airlines is concluded and the overall pilot seniority integration issue is resolved through a McCaskill-Bond arbitration. In either scenario, USAPA must use the Nicolau Award unless deviating from the Award is “supported by a legitimate union purpose.” That appears to be an impossibility.

Judge Silver’s Order contains powerful language on many issues but especially if the final integrated pilot seniority list is eventually decided through McCaskill-Bond arbitration. Yesterday Judge Silver wrote that an “impartial arbitrator’s decision regarding an appropriate method of seniority integration is powerful evidence of a fair result.” Judge Silver’s words have significance now but surely will have significance later for whatever panel of federal arbitrators eventually decides the final pilot seniority list after a merger. That panel of arbitrators, more



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likely than not, will be contemporaries of George Nicolau, so Judge Silver's words of endorsement will, more likely than not, have a meaningful effect on those future arbitrators.

USAPA's desire to depart from the Nicolau Award is even more complicated now than before. Now, US Airways "must evaluate any proposal by USAPA with some care to ensure that it is reasonable and supported by a 'legitimate union purpose.'" In other words, US Airways cannot remain neutral with respect to whatever it is that USAPA proposes by way of a seniority list if US Airways wants to avoid potential liability for USAPA's future DFR. US Airways now has a duty, imposed by Judge Silver, to evaluate USAPA's proposal "with some care to ensure that it is reasonable and supported by a legitimate union purpose." That was not the case before yesterday.

The East Pilots have not had an improvement in pay, benefits, etc., for almost ten years. The West Pilots have gone without similar adjustments for more than seven years. The experiment initiated by Steve Bradford and others in May of 2007 has proved to be an utter failure. It has done nothing but wreak financial hardship on all of the pilots – both East and West. The time has now come to put the dispute over the Nicolau Award behind so our clients, their families and others impacted by this dispute can start to receive the benefits that are long overdue.

I urge you to make sure that USAPA and the East Pilots are fully and fairly informed of the current state of affairs. The Nicolau Award is the current pilot seniority list, because it was submitted by ALPA, USAPA's predecessor, to US Airways in December, 2007, which then accepted it. There is no "legitimate union purpose" for deviating from the Nicolau Award. As noted above, there never has been nor will there ever be one.

USAPA needs to put the Nicolau dispute aside once and for all by facing reality and accepting the fact that it cannot dishonor the Award because there is no "legitimate union reason" for doing so. Please urge USAPA to bargain the best CBA it can with US Airways, then put the Nicolau Award in Section 22 unaltered, and then let the pilots vote on it. In other words, let the chips fall where they may. It is the only way to end their dispute.

Sincerely,

A handwritten signature in blue ink that reads "Marty".

Marty Harper

MH:kh