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October 15, 2012

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Re: US Airways v. Don Addington et al.  
No. CV-10-01579-PHX-ROS (D. Ariz.)

Dear Marty,

It's difficult to believe you read the same decision I did. And it's apparent that in spending so much effort trying to spin the Court's Order as a "victory" for your clients you overlooked the fact that the Court dismissed Counts I and III of the Complaint and entered judgment in favor of US Airline Pilots Association on Count II.

I remind you that Count II requested a declaration that:

entry into a collective bargaining agreement between US Airways and USAPA which does not incorporate the Nicolau Award would **not** constitute a breach of USAPA's duty of fair representation to the West Pilots in violation of the Railway Labor Act; and (b) USAPA would therefore **not** violate its duty under Section 2, First, of the Railway Labor Act "to exert every reasonable effort to make and maintain agreements concerning rates of pay, rules, and working conditions" if it continues to demand that US Airways agree to an integrated seniority list other than as reflected in the Nicolau Award, and therefore US Airways is **not** prohibited from accepting or implementing a non-Nicolau seniority list;

The Court therefore clearly declares that USAPA may pursue a seniority proposal that does not incorporate the Nicolau Award. And that is exactly what USAPA intends to do.

If and when a duty of fair representation claim is filed, the usual standards will apply. Plaintiffs will be required to show that USAPA's conduct "can fairly be characterized as so far outside a 'wide range of reasonableness,' *Ford Motor Co. v. Huffman*, 345 U.S. 330, 338, 73 S.Ct. 681, 686, that it is wholly 'irrational' or 'arbitrary.'" *Air Line Pilots*

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*Ass'n v. O'Neill*, 499 U.S. 65, 78 (1991). Your notion that the fairness of any future seniority integration will be measured against the Nicolau award is a sheer fabrication. And, quite frankly, your assumption that US Airways will delay bargaining on the pretext that any non-Nicolau integration is not supported by a "legitimate union purpose" is a disservice to all US Airways pilots and an interference with USAPA's bargaining authority under the RLA.

I am not going to respond to every statement in your letter, but it is absolutely clear that USAPA has legitimate reasons for pursuing something other than the Nicolau Award. USAPA's duty is to represent all the US Airways pilots fairly. There is nothing arbitrary, discriminatory or in bad faith about integrating seniority based on date of hire. USAPA's 2008 proposal includes several conditions and restrictions protecting the legitimate pre-merger career expectations of former America West pilots. Each of the other crafts on the property integrated their seniority based on DOH. No case holds that DOH integration violates the duty of fair representation. And, in fact, pilot seniority has almost always been integrated at US Airways based on DOH. As we explained in the various briefs filed with the Court, it is legitimate to place pilots with 15 years of seniority above pilots who are still on probation or still in ground school; to respect pre-merger career expectations; and to consider changed circumstances including the relative economic viability of US Airways vs. America West and the fact that East flying has remained stable or has increased while West flying has significantly diminished. It is legitimate to integrate seniority on a basis that is "fair and equitable" rather than on the basis of an ALPA Merger Policy which, at the time, had removed date of hire and longevity as primary factors but has since been changed to once again include them. This is only a partial list. The many reasons for pursuing something different were set forth in our papers before the Court on the cross-motions for summary judgment, and there may yet be others due to subsequent developments given that the union's action must be judged on all the facts and circumstances as they exist at the time the claim is filed.

The way to resolve this dispute is – as we have said repeatedly – for your clients to join in genuine, good faith discussions concerning USAPA's seniority proposal. This is serious request. USAPA wants and solicits the participation of the West Pilots through you or however your clients believe appropriate in determining the course of negotiations with US Airways over an integrated seniority list.

Your letter strongly suggests that you will reject this request, as do postings by the Army of Leonidas that continue to say "Nic or Nothing." We hope we are mistaken. We believe that such an "all-or-nothing" proposal does not fairly represent the interests of the

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West Pilot Class as a whole and that, if you are honest, you and your clients will understand the wisdom, and indeed the necessity, of genuinely discussing a mutually agreeable resolution of this dispute. The division among the pilots has been used by the Company as an excuse for the lack of meaningful progress in Section 6 negotiations and that excuse has been cited by the National Mediation Board to explain its failure to schedule further mediation sessions. It is a major reason for the fact that our pilots have gone for so long without any wage increase and why they continue to fall farther behind the industry standard. The need to fashion a common ground on this issue is even more important given the possibility of a merger between US Airways and American and a possible seniority integration proceeding with the Allied Pilots Association. We will be better able to protect our seniority in such a proceeding if we are working together.

I understand that you and your clients cling to the Nicolau decision because it gives former America West pilots a very significant seniority windfall, but USAPA simply is not required to follow what ALPA itself described as a "proposal" given the change in bargaining representative, what has transpired over the past 5 years and the legitimate interests of all its members.

After five years of litigation and millions dollars of legal expenses, you and your allies at US Airways have succeeded in obtaining an order that declares, in line with well-established precedent, that the lawful collective bargaining representative has the authority to advance a seniority proposal that will fairly represent the interests of all its members. What you describe as Captain Bradford's experiment has not failed but has succeeded and, in fact, provides the vehicle for resolving this longstanding dispute. While USAPA has no intention of following the suggestion made in your letter, we hope you will reconsider and agree to sit down and seriously discuss a mutually agreeable seniority proposal.

Please let me have a prompt response.

Very truly yours,

Patrick J. Szymanski