

Air, Inc. for the purposes of negotiation and administration of a collective bargaining agreement between the International Brotherhood of Teamsters-Airline Division (hereinafter "IBT") and Defendant, ABX Air, Inc. Local 1224, as the agent of the IBT, is certified collective bargaining "representative" within the meaning of Section 2, Ninth of the RLA, 45 U.S.C. § 152, Ninth of the crewmembers of ABX Air, Inc.

4. ABX Air, Inc.(hereinafter "ABX" or "the Company") is a corporation organized and existing under the laws of the State of Ohio, with its principal office and place of business in Wilmington, Ohio. ABX is a common carrier by air engaged in interstate commerce under 45 U.S.C. § 181.

FACTUAL ALLEGATIONS

5. Local 1224, as the duly authorized agent of the IBT, and ABX are parties to a collective bargaining agreement negotiated pursuant to the RLA which became effective by its terms from November 4, 2009 and continues through its amendable date of December 31, 2014. A copy of the entire collective bargaining agreement was not attached hereto because of its size and because Defendant ABX already has a copy of same.

6. The operations of ABX are governed by the Federal Aviation Administration (FAA) which has issued Federal Aviation Regulations (FARs) setting forth in detail requirements that ABX and its crewmembers must follow in order to maintain certificates as an air carrier and as a crewmember. FAR § 121.537(e) provides: "Each pilot in command of an aircraft is responsible for the preflight planning and the operation of the flight in compliance with this chapter and the operations specifications." Additionally, FAR § 91.3(a) provides: "The pilot in command of an aircraft is directly responsible for, and is the final authority as to, the operation of that aircraft." Copies of these Federal Aviation Regulations is attached hereto and made a part hereof as Attachment A.

7. On or about June 16, 2012 Captain Morten (Chip) Homme and First Officer Robert Martin were assigned Flight JAL (Japan Airlines) 6589 between Osaka, Japan and Shanghai, China. When Captain Homme and First Officer Martin arrived at the JAL Operations in Osaka they

discovered that the alternate airport for Flight JAL 6589 was listed as RJFR, which was not familiar to either Captain Homme or First Officer Martin. After conducting some research, First Officer Martin was able to determine that RJFR Airport was located on North Kyushu Island, a small manmade island.

8. Captain Homme and First Officer Martin proceeded to the aircraft to perform their normal preflight duties approximately 50 minutes prior to departure. While performing the normal preflight duties, Captain Homme discovered that RJFR airport was not loaded into the Flight Management Computer (FMC). First Officer Martin, using latitude and longitude from the on board approach plates, located the RJFR airport. First Officer Martin noted that the RJFR airport had a single precision approach to Runway 18 with weather conditions that seemed marginal with forecast of rain showers and a crosswind component, gusting to 28 knots. An additional concern for Captain Homme and First Officer Martin was an inoperable fuel quantity indication, which had been deferred making fuel planning more difficult if the flight actually proceeded to RJFR airport as the alternate airport.

9. Captain Homme contacted the Flight Control dispatcher and expressed his concern over the safety of the flight since the RJFR airport was not loaded in the FMC. The Flight Control dispatcher was not aware that the RJFR airport was not loaded in the FMC. The Flight Control dispatcher advised Captain Homme that JAL wanted to use RJFR airport as the alternate due to ground services available and that JAL did not want to use RJBB as an alternate airport because it would cause the "bumping of freight." RJBB airport was used as the alternate airport previously.

10. Captain Homme asked the Flight Control dispatcher if other alternate airports were acceptable to JAL and suggested to such alternate airports that were about the same distance as the RJFR airport.

11. Captain Homme was then directed to talk to Joe Ezell, the Company's System Chief Pilot, who advised Captain Homme that he had just taken a flight without the alternate airport being loaded into the FMC in Europe. Captain Homme expressed his safety concerns to Mr. Ezell at which time Mr. Ezell insisted to know if Captain Homme was refusing to take the flight using RJFR

airport as the alternate. Captain Homme expressed his safety concerns and advised Mr. Ezell that he wanted to know if other airports like RJFF or RJFU would be acceptable to JAL as an alternate since those alternate airports were in the FMC data base.

12. Captain Homme was transferred back to the dispatcher's office and after a few minutes was advised that JAL wanted to use the RJBB airport as the alternate. Captain Homme advised the dispatcher that if that was the choice of JAL he would follow that request.

13. After getting the new alternate airport of RJBB, located in Kansai, Japan, Flight JAL 6589 departed Osaka earlier than scheduled and approximately 14,000 to 16,000 pounds under the aircraft's allowable payload. Flight JAL 6589 flew directly to Shanghai without the need to divert to the alternate airport RJBB.

14. Captain Homme was requested to submit a safety debrief to Robert J. Boja, the Company's Director of Flight Operations. Captain Homme submitted the safety debrief as requested on or about June 18, 2012. A copy of the safety debrief submitted by Captain Homme is attached hereto and made a part hereof as Attachment B.

15. On or about June 18, 2012 Captain Homme was removed from the remainder of his flight assignment in Japan and was returned by ABX to Wilmington to attend hearings under Article 5, Section B.1. and Section B.2. of the collective bargaining agreement on June 22, 2012 and June 29, 2012, respectively.

16. By letter dated July 17, 2012 Captain Homme was advised that ABX had concluded that Captain Homme's concerns about safety of flight on Flight JAL 6589 was not valid or reasonable and further concluded that Captain Homme required additional training to allow him to operate safely and reliably as a captain in the Company's international operating environment. The July 17, 2012 letter also advised Captain Homme that he had to execute a "Letter of Commitment" by July 19, 2012 and if he failed to do so his employment would be terminated. A copy of the July 17, 2012 letter to Captain Homme as well as the July 17, 2012 "Letter of Commitment" are attached hereto and made a part hereof as Attachments C and D respectively.

17. By letter dated July 20, 2012 Captain Homme, a 27 year employee of ABX, advised Mr. Boja that he was willing and able to meet the Company's needs to be fully capable of operating in the Company's international environment in accordance with the FARs and the Company's manuals and policies. Captain Homme further advised Mr. Boja that he was willing to attend training on international operation destinations not included in the FMC navigation database. However, Captain Homme advised Mr. Boja that he was unable to sign the "Letter of Commitment" because he believed he exercised his captain's (pilot in command) authority reasonably in a manner that ensured the safe operation of the flight while at the same time attempting to minimize any impact on operations. A copy of the July 20, 2012 letter from Captain Homme to Mr. Boja is attached hereto as Attachment E.

18. By letter dated July 23, 2012 Mr. Boja advised Captain Homme that his employment with ABX was being terminated for his failure to sign the "Letter of Commitment." A copy of the July 23, 2012 letter from Mr. Boja to Captain Homme is attached hereto and made a part hereof as Attachment F.

COUNT I

19. Plaintiff incorporates by reference the allegations contained Paragraphs 1 through 18 as if fully rewritten herein.

20. FAR Section 91.3 places the responsibility and authority of the pilot in command of an aircraft to make decisions concerning the safe operation of that aircraft. FAR Section 91.3 is attached hereto as part of Attachment A.

21. Article 1, Section B of the collective bargaining agreement specifically provides that one of the purposes of the collective bargaining agreement is "to provide for the operation of the Company under methods which will further, to the fullest extent possible, the safety of air transportation, . . ." (emphasis added) A copy of Article 1, Section B of the collective bargaining agreement is attached hereto and made a part hereof as Attachment G.

22. Chapter 1, page 12 of the Company's Flight Operations Manual (FOM), as approved by the FAA, provides that the Captain is responsible for and is the final authority as to the operation

of the aircraft in compliance with FARs and Company regulations, among other things, and further provides that the Captain's command of the aircraft begins when he reports for duty at the aircraft. A copy of Chapter 1, pages 12 and 13 of the Company's FOM Revision No. 56, dated March 13, 2012 is attached hereto and made a part hereof as Attachment H.

23. Chapter 3, Section 2 at page 13 of the Company's 767 Aircraft Operating Manual (AOM) Revision No. 43 dated March 15, 2012 specifically provides that when a "Not In Database" message appears when entering a route, waypoints can be entered as latitude and longitude to avoid delaying of flight and the approach can be flown utilizing raw data but for domestic operations only. A copy of Chapter 3, Section 2, page 13 of the 767 AOM, Revision No. 43 dated March 15, 2012 is attached hereto and made a part hereof as Attachment I.

24. The conduct of the Company in requiring Captain Homme to admit that he did not reasonably exercise his Captain's authority and that his reasons for questioning the use of an alternate airport that was not loaded into the FMC database were invalid, and requiring him to sign a letter of commitment or face termination of his employment, places every crewmember employed by ABX in the unenviable position of ignoring his or her obligations under the FARs, the safety requirements of the collective bargaining agreement, the Company's FOM and AOM or face termination of employment. Such conduct of ABX is contrary to the public policy of the United States as set forth in the FARs, contrary to a crewmember's obligations under the FARs, contrary to the Company's FOM and AOM and the crewmember's obligations under the collective bargaining agreement. Unless enjoined from doing so, ABX will continue to require crewmember's to violate their obligations as set forth above or face termination of employment. As a result, Captain Homme and all other crewmembers employed by ABX will continue to face irreparable harm if such conduct by ABX is not enjoined.

COUNT II

25. Plaintiff incorporates herein all of the allegations contained in paragraphs 1 through 24 as if fully rewritten herein.

26. The RLA places upon both employers and employees the obligation to “exert every reasonable effort to make and maintain [collective bargaining] agreements . . . and to settle all disputes, whether arising out of the application of such agreements or otherwise . . .” RLA, Section 2, First 45 U.S.C. § 152, First. The RLA further requires that any such disputes between an employee or a group of employees of a carrier if not otherwise resolved may be referred by either party to an appropriate adjustment board. 45 U.S.C. § 184.

27. The above described conduct by ABX, including its actions of conditioning continued employment of Captain Homme upon the requirement of him signing a letter of commitment (Attachment D) admitting that he had failed to reasonably exercise his authority as the pilot in command of Flight JAL 6589, providing Captain Homme a Hobson’s choice of either admitting that his exercise of his authority was not reasonable and then filing a grievance over signing said letter of commitment, or having his employment terminated for failing to falsely admit that the exercise of his authority was not reasonable, constitutes a violation by ABX of its obligations under the RLA and the collective bargaining agreement to allow employees to attempt to settle and resolve disputes through an agreed upon procedure including the appropriate adjustment board.

28. By agreeing to sign the letter of commitment as proposed by ABX, Captain Homme would have been admitting that he failed to reasonably exercise his authority as a pilot in command which would have been used by ABX to challenge any grievance Captain Homme would have filed over the requirement to sign the letter of commitment in order to avoid his termination. By signing the letter of commitment, Captain Homme would have had little or no chance to be successful to challenge the contents of the letter of commitment and the required disciplinary training. On the other hand, by refusing to sign the letter of commitment, Captain Homme’s employment was terminated by ABX. Captain Homme has no adequate remedy or law to challenge the Company’s violations of the RLA, the FARs, and its own regulations without selecting the Hobson’s choice of having his employment terminated by the Company.

29. The Company's actions in this matter attack the integrity of the grievance and arbitration procedures contained in the collective bargaining agreement as required by the RLA and has a "chilling effect" on other crewmembers reasonably exercising their authority under the FARs and the Company's regulations to conduct operations which will futher, to the fullest extent possible, the safety of air transportation. The conduct of ABX in this regard constitutes irreparable harm from which Captain Homme and all other crewmembers facing similar circumstances will not be able to obtain adequate review or remedy.

RELIEF REQUESTED

WHEREFORE, Plaintiff prays that this Court provide the following relief:

- A. A Preliminary and Permanent Injunction prohibiting the Defendant from requiring Captain Homme or any other crewmembers similarly situated to falsely admit the unreasonable exercise of their pilot in command authority or face termination of employment and ordering the reinstatement of Captain Homme with full back pay, seniority and benefits;
- B. A Preliminary and Permanent Injunction prohibiting the Defendant from continuing to engage in conduct of taking disciplinary action against crewmembers that has a "chilling effect" on the reasonable exercise of their authority to make sure that flight operations are conducted safely to the fullest extent possible;
- C. After a final hearing, a Declaratory Judgment that the conduct of ABX in coercing crewmembers into violating their responsibilities under the FARs and company regulations or face discipline, up to and including termination, is in violation of the FARs, in violation of the public policy United States, in violation of the Company's regulations and in violation of the collective bargaining agreement between Local 1224 and ABX.
- D. An Order granting such other further relief as the Court deems just and proper, including Court costs and reasonable attorney fees.

Respectfully submitted,

DOLL, JANSEN, FORD & RAKAY

/s/ John R. Doll

John R. Doll - 0020529

Trial Attorney

Julie C. Ford - 0040896

Co-Counsel

111 West First St., Suite 1100

Dayton, Ohio 45402-1156

(937) 461-5310

(937) 461-7219 (fax)

jdoll@djflawfirm.com

jford@djflawfirm.com

ATTORNEYS FOR PLAINTIFFS