

**UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT**

No. 03-3176

LEROY "BUD" BENDEL, JAMES ARTHUR, PATRICK BRADY,
THEODORE A. CASE, MATTHEW J. COMLISH, DARSHANPRIT
DHILLON, LEMUEL A. DOUGHERTY, MICHAEL V. FINUCAN, JOHN
S. HEFLEY, HOWARD B. HOLLANDER, ROBERT A. PASTORE and
SALLY YOUNG

Plaintiffs-Appellants,

v.

ALLIED PILOTS ASSOCIATION, AIR LINE PILOTS ASSOCIATION,
AMERICAN AIRLINES, INC., and TWA AIRLINES, LLC

Defendants-Appellees

On Appeal from the United States District Court for the District of New
Jersey

BRIEF OF APPELLEE ALLIED PILOTS ASSOCIATION

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Appellee Allied Pilots Association (“APA”) respectfully submits the following brief in opposition to the Appellant Class’ brief in this appeal. As will be demonstrated below, this Court should affirm the district court’s dismissal of the Class’ claims against the APA.

STATEMENT OF ISSUES

1. Whether the APA owed the Class a duty of fair representation prior to the date on which the APA was certified as the class members’ collective bargaining representative by the National Mediation Board on April 3, 2002.
2. Whether the APA breached the duty of fair representation to the Class members after April 3, 2002, by not altering or reversing actions taken prior to April 3, 2002.
3. Whether the Class’ claims of breach of duty by the APA for acts prior to certification are untimely.
4. Whether the Class’ state law claims are pre-empted by the Railway Labor Act, 45 U.S.C. §§ 151, et seq.

COUNTERSTATEMENT OF THE CASE

This case arises out of the demise of Trans World Airlines, Inc. (“TWA”), and the purchase in early 2001 of substantially all TWA assets by American Airlines, Inc. (“American”). In order to preserve the jobs of TWA’s pilots,

initially at an American subsidiary TWA Airlines, LLC ("TWA LLC"), the labor organization representing those pilots - - the Air Line Pilots Association ("ALPA"), through its TWA division, the TWA Master Executive Council ("TWA MEC") - - agreed to waive certain labor protective provisions in the ALPA/TWA collective bargaining agreement affecting the procedures for integrating the seniority of the TWA pilots with that of the American pilots. The TWA pilots also received from American a promise to facilitate negotiations over seniority integration between the TWA MEC and the APA, the labor union representing the American pilots.

Those negotiations went forward as promised and, although the two sides made significant progress toward an agreement, they were ultimately unable to come to full agreement. Accordingly, as was its right and duty under the Railway Labor Act, 45 U.S.C. § 151, *et seq.* ("RLA"), the APA negotiated and executed a modification of its collective bargaining agreement with American to provide for integration of the seniority of the two pilot groups. Without such modification, known as Supplement CC, the former TWA pilots would simply be "endtailed" on the American pilot seniority list; with Supplement CC, the former TWA pilots were substantially "dovetailed" on the list and accorded other significant job, status and promotion protections.

On November 9, 2001, the APA petitioned the National Mediation Board (“NMB”) to declare TWA LLC and American a single transportation system for representational purposes and to designate the APA as the representative of the combined unit. Although ALPA and the TWA MEC opposed that petition, on March 5, 2002, the NMB declared the two entities a single transportation system and, when ALPA disclaimed interest in representing the combined unit, on April 3, 2002, extinguished ALPA’s representational certificate and extended APA’s to cover the combined unit. On that date, Supplement CC became applicable to TWA LLC pilots.

Even before Supplement CC was executed, a number of TWA LLC pilots made known their displeasure with the prospective seniority integration. In the face of numerous threats by TWA LLC pilots to sue over Supplement CC, on February 21, 2002, the APA instituted a lawsuit in the United States District Court for the Northern District of Texas against current class representative Leroy “Bud” Bensel. Appendix (“A”) at 440-41 (Memorandum Opinion and Order in Allied Pilots Association v. Bensel (N.D. Tex. June 6, 2002)). The lawsuit sought a declaration that Supplement CC constituted an enforceable agreement, that APA breached no duty or obligation in negotiating and concluding it and that the APA would violate no duty or obligation in enforcing the Supplement. Id. Rather than

join issue on the merits, Defendant Bensel moved to dismiss on various jurisdictional grounds, and the district court dismissed for lack of personal jurisdiction on June 6, 2002. A440-48.

The APA then filed essentially the same suit in the District Court for the District of New Jersey on June 19, 2002. A0021 (decision below); A0944-0960 (APA Complaint). Defendant Bensel, on behalf of the Class subsequently certified by the district court, answered the APA's complaint on October 3, 2002, and at that time set forth a set of counterclaims and crossclaims against the APA, American, TWA LLC and ALPA. A0008 (docket sheet). At the district court's suggestion, the parties were realigned so that the Class became the plaintiff in the case and APA, ALPA, American and TWA LLC the defendants. A0936-38 (Order Realigning the Parties). The Class filed an omnibus Second Amended Restated Complaint ("Complaint") against the four defendants on January 27, 2003, incorporating the allegations of its counter and crossclaims. A048-94. The district court certified the plaintiff class on February 12, 2003, with 12 class representatives. A0939-43. Of the 12 class representatives, at least 7 had served as members of the TWA MEC or its various committees, including the Merger Committee that negotiated over seniority integration with the APA. A0449, 0452, 0463, 0541, 0545-46 (Declarations of Sally Young, John Hefley, Leroy "Bud"

Bensel, Robert Pastore; March 28, 2001, Letter to NMB from TWA MEC).

The Class' Complaint contained ten counts, seven of which raise allegations against the APA pertinent to this appeal.¹ Count II alleges that the APA breached a duty of fair representation to the former TWA pilots both before and after the APA was certified to represent those pilots. A0071-74. Prior to certification, the Class alleges, the APA had a duty to classmembers because it was generally known and intended that the APA would one day be their representative. A0071-72 (¶¶117). The Class alleges the APA breached that duty by negotiating Supplement CC with American and thereafter seeking from the NMB actual representation rights with respect to the classmembers; by "caus[ing], permitt[ing] and otherwise participat[ing]" in certain alleged misrepresentations that caused the TWA pilots to waive the labor protective provisions of the TWA/ALPA collective bargaining agreement; and by declining to arbitrate seniority integration issues although requested to do so. A0072-73 (¶¶120, 121, 124). As post-certification breaches of duty, the Class alleges the APA continued to fail to negotiate a "fair and equitable" seniority integration despite demands to do so and generally failed to treat the Class fairly. A0073 (¶¶ 125, 126). Although the Class does not

¹The Class voluntarily moved to dismiss Count X of the Complaint regarding an arbitration of a TWA LLC base closing, and that Count is not pertinent to this appeal. A0041-42.

specifically denominate Count III as a duty of fair representation claim, it alleges that the “APA owed the Class a fiduciary duty of good faith and to treat the Class fairly” and that the APA breached that duty “[b]y reason of the acts and conduct . . . previously asserted” - - i.e., the conduct set forth in the fair representation claim - - and by allegedly “requir[ing] ALPA to negotiate the seniority integration with APA” instead of American or TWA LLC. A074-75 (¶¶ 133, 136, 137).

Finally, the Class lodges five state law claims against the APA: tortious interference with ALPA’s duty to the Class by convincing the Class, through fraud and coercion, to waive its labor protective provisions (Count V); fraudulent misrepresentation (also alleged as part of Count II and Count V) (Count VI); tortious interference with American’s agreement to use its best efforts in connection with the seniority integration negotiations between the APA and ALPA (Count VII); tortious interference with American’s alleged duty of good faith and fair dealing in using its best efforts (Count VIII); and conspiracy with all of the other defendants to do all of the things previously alleged (Count IX).

A0077-0086.

On May 5, 2003, the APA filed a motion to dismiss all of the claims against it, contending 1) that it owed no duty of fair representation to the Class prior to its certification as representative of the TWA LLC pilots and took no action that

