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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA, SAN FRANCISCO DIVISION

AMERICAN AIRLINES FLOW-THRU PILOTS COALITION, GREGORY R. CORDES, DRU MARQUARDT, DOUG POULTON, STEPHAN ROBSON, AND PHILIP VALENTE III, on behalf of themselves and all persons similarly situated,

Plaintiffs,

v.

ALLIED PILOTS ASSOCIATION; and AMERICAN AIRLINES, INC.,

Defendants.

Case No. 3:15-cv-03125-RS

DEFENDANT AMERICAN AIRLINES, INC.'S REPLY BRIEF IN SUPPORT OF MOTION TO DISMISS COUNT ONE OF THE FIRST AMENDED COMPLAINT PURSUANT TO FEDERAL RULE OF CIVIL PROCEDURE 12(B)(6)

Hearing Date:	November 12, 2015
Time:	1:30 P.M.
Place:	Courtroom 3, 17th Fl.
Judge:	Hon. Richard Seeborg

PRELIMINARY STATEMENT

In their Opposition ("Opp." [Doc. No. 32]) to the motion to dismiss filed by Defendant American Airlines, Inc. ("American"), Plaintiffs argue that American should be joined with defendant Allied Pilots Association ("APA") in Count One of the First Amended Complaint ("FAC") – not because American itself harbored any sort of ill-will or animus toward them, but merely because it supposedly knew or should have known that APA allegedly did. As in the FAC, Plaintiffs' arguments in their Opposition principally rely on the simple fact that American reached collectively-bargained agreements with the APA. Neither this fact, nor Plaintiffs' additional assertions that APA was acting with improper motives and that American should have been aware the union (allegedly) intended to negatively impact Flow-Thru Pilots by entering into the challenged agreements with American, is sufficient to state a claim against American.

An employer may be joined in a duty of fair representation ("DFR") claim against a union only if the complaint includes well-pleaded and plausible allegations that *the employer itself* engaged in discriminatory conduct against the plaintiffs when it negotiated the agreements at issue. Because Plaintiffs have alleged nothing more than run-of-the-mill collective bargaining behavior by American, the FAC does not come close to satisfying the controlling legal standard for joining American in Count One.

Furthermore, the cases cited by Plaintiffs for the proposition that an employer can be jointly liable with a union for a union's breach of DFR, simply because the employer knew or should have known of the union's allegedly discriminatory motive, do not help the Plaintiffs here. Those cases: (1) arise under the Labor-Management Relations Act ("LMRA"), rather than the Railway Labor Act ("RLA"); (2) address situations where a district court may exercise jurisdiction over an employer for claims for breach of the collective bargaining agreement – whereas, in the instant case, Plaintiffs have not alleged that American breached any labor contracts and there is no dispute that the Court has

jurisdiction over the claim have asserted in Count One; and/or (3) involve extreme patterns of racial or other invidious discrimination, which has not been alleged in the FAC. None of the cases cited by Plaintiffs establish an applicable legal standard other than the one applied by American in its motion to dismiss – namely, that Plaintiffs must allege some independent misconduct on the part of American.

Because Plaintiffs have not stated a claim against American for collusion in APA's alleged breach of DFR, the claim asserted against American in Count One of the FAC should be dismissed.[1]

ARGUMENT

I. PLAINTIFFS HAVE NOT ALLEGED ANY INDEPENDENT DISCRIMINATORY CONDUCT BY AMERICAN.

While there are some instances in which an employer may be joined to a DFR claim against a union, there must be well-pleaded factual allegations that the employer actively colluded with the union in the latter's breach. Conclusory allegations are insufficient to establish the requisite collusion. *See* Defendant American Airlines, Inc.'s Notice Of Motion And Motion To Dismiss Count One Of The First Amended Complaint Pursuant To Federal Rule Of Civil Procedure 12(b)(6) ("Motion to Dismiss") (Doc. No. 28), at 8, n.4 (discussing authorities); *see also In re AMR Corp.*, No. 11-15463 (SHL), 2015 WL 5599240, at *9 (Bankr. S.D.N.Y. Sep. 22, 2015) ("The Complaint simply makes statements amounting to the legal conclusion that American colluded with the APA to gain the APA's approval of the New CBA and that the Defendants 'entered into a facially and discriminatory and arbitrary agreement.' These legal conclusions are not supported or

[1] Plaintiffs state that American should be joined in Count Two, asserted against APA for breach of its DFR in connection with the ongoing seniority-integration process, to ensure that "complete and meaningful relief" is available "on the seniority list issue." (Opp. at 14.) American does not object to being joined to Count Two for the limited purpose of effectuating the remedy proposed by Plaintiffs on Count Two of the FAC, but, to be clear, Plaintiffs' challenge to the seniority-integration process in Count Two is meritless, no viable claim has been or could be asserted against American with respect to the seniority-integration process, and Plaintiffs are entitled to no remedy whatsoever.

tied to facts in the Complaint."). Rather, to survive the instant Motion to Dismiss, Plaintiffs must allege that American itself engaged in some form of discriminatory conduct against the Flow-Through Pilots.[2]

This principle was set forth clearly by the district court in *Rakestraw v. United Airlines, Inc.*, 765 F. Supp. 474 (N.D. Ill. 1991), *aff'd in part, rev'd in part*, 981 F.2d 1524 (7th Cir. 1992). In *Rakestraw*, the district court concluded that a pilots union (ALPA) "unfairly discriminated" against a sub-group of United Airlines ("United") pilots when it negotiated lower seniority for those pilots as part of a new collective bargaining agreement with United. 765 F. Supp. at 493. Although United was well-aware of the animosity between ALPA and the sub-group of pilots (those pilots had previously crossed the picket line during an ALPA strike), the court rejected the pilots' collusion claim because they failed to show that United itself had "acted in bad faith or discriminated against plaintiffs in accepting ALPA's proposal." *Id.* at 493-94.

Plaintiffs note that the district court's ruling in *Rakestraw*, requiring independent discriminatory conduct in order for the employer to be liable for a union's DFR breach, was not addressed on appeal because the Seventh Circuit concluded that there was no DFR breach by ALPA. (*See* Opp. at 12-13.) But, the Seventh Circuit left undisturbed that portion of the district court's opinion and it has been applied in subsequent cases. *See Cunningham v. United Airlines, Inc.*, No. 13-C-5522, 2014 WL 441610, at *11 (N.D. Ill. Feb. 4, 2014) (citing *Rakestraw* for proposition that plaintiffs seeking to assert that an employer is liable for a union's DFR breach must "allege some sort of *collusive act on the part of [the employer]* acting in concert with [the union]") (emphasis added); *see also Addington v. US Airline Pilots Ass'n*, 588 F. Supp. 2d 1051, 1063 (D. Ariz. 2008)

[2] Joinder of the employer in a DFR case is the exception to the rule that such cases proceed against the union alone. *See generally Corbin v. Pan Am. World Airways, Inc.*, 432 F. Supp. 939, 943 (N.D. Cal. 1977) ("And *in certain cases* where it is alleged that the employer has acted in conjunction with the union to discriminate against employees, the employer is properly joined in the action.") (emphasis added).

(rejecting allegations that employer participated in union's DFR breach, because "[e]ven if the union's goals or means were improper, the record does not show that the airline pursued or shared those goals or means"), *rev'd on other grounds*, 606 F.3d 1174 (9th Cir. 2010).

Plaintiffs have utterly failed in the FAC to allege any sort of independent discriminatory conduct on the part of American, and the Opposition fails to address the inadequacies of their allegations. With respect to the "pattern of discrimination against the FTPs [Flow-Through Pilots]," Plaintiffs' Opposition restates the five allegedly-improper actions taken by APA, as listed in the FAC, and then simply goes on to state that "American was party to the agreements" vis-à-vis four of them. (*See* Opp. at 3-5, 11-14.) But merely being a party to a collective bargaining agreement with a union is nowhere near enough to hold an employer liable for a union's DFR breach (*see* Motion to Dismiss, at 8 (discussing authorities)) – a principle that Plaintiffs cannot dispute.

Instead, Plaintiffs contend that the negotiated agreements at issue in this case are somehow unique because they allegedly reflected a discriminatory motive that the APA harbored against the Flow-Through Pilots. (*See* Opp. at 11-12.) Such allegations of discriminatory motive on the part of a union do not establish any sort of liability against an employer and, indeed, may not even be sufficient to state a claim against a union. *See Rakestraw*, 981 F.2d at 1530-31 ("Bargaining has winners and losers. . . . Unless its leaders are unfathomably dense, the union knows who wins and who loses. The losers always may say that the union 'intended' them to lose."). "Knowledge that some groups gain or lose as a result of a rule does not [] amount to a discriminatory motive." *Id.* at 1532.

Moreover, even if "it is entirely plausible that American was aware of [the APA's allegedly-improper] motive as it was a party to the Flow-Through Agreement when the agreement was negotiated" (Opp. at 12), such allegations are entirely insufficient to state a

cognizable claim against American for collusion in the APA's alleged breach of DFR. As explained by the district court in *Cunningham*, considerations of federal labor policy mandate that mere knowledge of a union's discriminatory intent during the collective bargaining process does not establish actionable collusion by the employer:

> Plaintiff cites Second Circuit authority allegedly standing for the proposition that potential knowledge of a Union's discrimination against its members is enough to support a finding of collusion on the part of [the employer]. However, this court is loath to place an affirmative obligation on an employer to supervise unions, which are the entity properly entrusted with employees' interests at the collective bargaining table, in the absence of an extreme factual scenario not present here. As stated in *Carroll v. Brotherhood of Railroad Trainmen*, 417 F.2d 1025, 1028 (1st Cir.1969): a "union must often make good-faith tactical decisions in spite of employee disagreement"; "the employer must in most circumstances be able to rely on the union's disposition" in spite of some employee objections; and it would have a "detrimental effect on labor-management relations" if an employer were "forced to ignore union representations and take the initiative in dealing with employees whenever it suspects a discriminatory union motive."

2014 WL 441610, at *6 (internal citation omitted); *see also Davis v. Bhd. of Ry., Airline & S.S. Clerks, Freight Handlers, Express & Station Emps.*, 444 F. Supp. 200, 201 (W.D. Va. 1978) ("By agreeing to negotiate with [the union] on this issue, the Railway did not assume a duty to examine the motives of the union in seeking to consolidate some districts while excluding others. Were such a duty imposed in collective bargaining situations, employers would become guarantors to employees that their union is representing their interests in a good faith and non-arbitrary manner.").

Because Plaintiffs have not alleged discriminatory conduct *by American* with respect to APA's alleged breach of its DFR, Count One in the FAC should be dismissed as to American.

II. PLAINTIFFS' ATTEMPTS TO REDEFINE THE CONTROLLING LEGAL STANDARD FOR EMPLOYER COLLUSION IN A UNION'S DFR BREACH SHOULD BE REJECTED.

Plaintiffs rely on three other sets of decisions to lower the bar for their attempt to hold American liable for the APA's alleged breach of DFR. (Opp. at 9-11.) Those decisions do not support Plaintiffs' position in this case.

First, Plaintiffs cite *Bennett v. Local Union No. 66*, 958 F.2d 1429, 1440 (7th Cir. 1992), for the proposition that "[a]n employer, like [American], can be held jointly liable for a DFR breach where the union and the employer actively participated in the other's breach." (Opp. at 9.) But, *Bennett* was a "hybrid breach of contract/duty of fair representation action brought under section 301 of the [LMRA]," 958 F.2d at 1433; hybrid actions generally involve the circumstances under which a court will adjudicate a claim against the employer for breach of collective bargaining agreement and, except for situations of active employer-union collusion not alleged in the FAC, hybrid actions do not involve attempts to hold an employer liable for a union's DFR breach. Plaintiffs' DFR claim in Count One of the FAC – which arises under the RLA, and not the LMRA – does not assert that the employer breached a collective bargaining agreement as part of an alleged DFR breach by the union. *See id.* at 1433 ("[T]he plaintiff must establish both that the Company breached the collective bargaining agreement and that the Union breached its duty of fair representation."); *see also* Motion to Dismiss, at 9. Plaintiffs cannot allege that American has breached any collective bargaining agreements, and *Bennett* therefore does not support Plaintiffs' position in this case.[3]

Second, Plaintiffs contend that an employer can be joined in a union's alleged DFR breach any time the employer purportedly "aids and abets a union's breach of duty."

[3] The LMRA generally authorizes district courts to determine if an employer has breached a collective bargaining agreement. *See* 29 U.S.C. § 185(a). Such disputes under the RLA, on the other hand, are generally relegated to the "mandatory, exclusive and comprehensive" jurisdiction of an arbitral board of adjustment. *See, e.g., Andrews v. Louisville & Nashville R.R.*, 406 U.S. 320, 322-24 (1972).

(Opp. at 10-11.) The cases Plaintiffs cite – *Glover v. St. Louis-S.F. Ry.*, 393 U.S. 324 (1969), and *Richardson v. Tex. & New Orleans R.R.*, 242 F.2d 230 (5th Cir. 1957) – contemplate only a very narrow exception to the general rule that DFR claims proceed against the union and the union alone. Both *Glover* and *Richardson*, from 1969 and 1957 respectively, involved a pattern of invidious discrimination on the basis of race in which the employer had actively participated. In *Glover*, there were detailed factual allegations that "the bargaining representatives . . . ha[d] been acting in concert with the railroad employer to set up schemes and contrivances to bar Negroes from promotion wholly because of race." 393 U.S. at 331. In *Richardson*, the plaintiffs, who were systematically excluded from membership in the union, alleged that a new collective bargaining agreement codified formal discrimination on the basis of race, and the court concluded that they had stated "a judicially cognizable breach of the bargaining representative's statutory duty not to discriminate against Negro employees of a craft or class represented because of their race or color." 242 F.2d at 230-31. Accordingly, the narrow exception recognized in *Glover* applies only where a union and employer "act[ed] in concert" and with the same hostility towards the relevant group of employees – something Plaintiffs have not alleged here.[4]

Third, Plaintiffs' reliance on *Deboles v. Trans World Airlines, Inc.*, 350 F. Supp. 1274, 1288 (E.D. Pa. 1972), is also misplaced. (*See* Opp. at 11.) In *Deboles*, the employer was alleged to have been "an active agent in effectuating the Union's breach of its duty of fair representation" as a party to the union's "deliberate misrepresentations" to

[4] Both *Glover* and *O'Mara v. Erie Lackawana R.R. Co.*, 407 F.2d 674 (2d Cir. 1969), cited by Plaintiffs (*see* Opp. at 10-11), primarily concerned a district court's jurisdiction over a breach of contract claim against the employer as part of an alleged DFR breach by the union, rather than the employer's liability for the union's alleged DFR breach. *See, e.g., Croston v. Burlington N. R.R.*, 999 F.2d 381, 387 (9th Cir. 1993) (discussing *Glover*), *overruled on other grounds by Hawaiian Airlines, Inc. v. Norris*, 512 U.S. 246 (1994); *Crusos v. United Transp. Union, Local 1201*, 786 F.2d 970, 972-73 (9th Cir. 1986) (discussing *O'Mara*). Moreover, in both cases, joint employer-union discrimination had prevented the plaintiffs from seeking relief for the employer's alleged contract breaches through the RLA's otherwise-mandatory arbitration processes. Here, the FAC contains no allegations of collective bargaining agreement violations.

employees during negotiations. 350 F. Supp. at 1279, 1288. Although the employer's motion for summary judgment was denied, the *Deboles* court carefully distinguished the First Circuit's decision in *Carroll* (quoted at p. 5, *supra*), cautioning that its own decision did not stand for the proposition "that any employer can be held liable whenever he, in any manner, cooperates in the hostile discrimination of an employee." *Deboles*, 350 F. Supp. at 1288.

In the instant case, Plaintiffs have not alleged the sort of pattern of joint, "deliberate misrepresentations" relied on by the court in *Deboles*, or, for that matter, any other form of joint misconduct. Mere allegations that an employer should have known that a union's motives were (allegedly) impure are insufficient to state a claim that the employer is liable for the union's DFR breach, and Count One of the FAC against American must be dismissed.

CONCLUSION

For the foregoing reasons, Defendant American Airlines, Inc. respectfully requests that this Court dismiss with prejudice Count One of the First Amended Complaint as to American.

Dated: October 26, 2015.

Respectfully submitted,

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