

No. 00-11223

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

KAUFMAN

Plaintiffs - Appellees

v.

ALLIED PILOTS ASSOCIATION

Defendants - Appellants

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

APPELLANTS' BRIEF

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Dated: January 25, 2001

CERTIFICATE OF INTERESTED PERSONS

No. 00-11223

Kaufman v. Allied Pilots Association

The undersigned counsel of record hereby certifies that the following listed persons have an interest in the outcome of this case. These representations are made in order that the judges of this court may evaluate possible disqualification or recusal.

Persons Interested in the Controversy:

Allied Pilots Association, Richard LaVoy, Brian Mayhew, David Aldrich, Robert Ames, Stanley Bissell, Dennis Breslin, J. S. Ditty, Ernest Dryer, David Duquemin, L. G. Foster, Mark Hunnibel, Jeff Marchand, Norman Patterson, Steve Roach and Randy Trommer (Appellants)

Richard Kaufman, Jack Marut, C. Anthony Wainswright, Jeffrey Krasnoff, Center for Rehabilitative Medicine, Shon Prejean, Steven Carli, Mark Lewis, Joellen Cashion, Jim Cashion, Carolyn Rogers, Rosalie J. Vass, Mary C. Cascino, Ralph A. MacDonald and Nancy Geidel (Appellees)

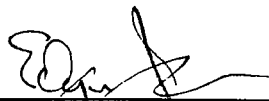
American Airlines, Inc. (named as a Defendant below) and AMR, Inc. (parent corporation of American Airlines, Inc.)

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Respectfully Submitted,

A handwritten signature in black ink, appearing to read 'Edgar N. James', written over a horizontal line.

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STATEMENT REGARDING ORAL ARGUMENT

The issues presented on this appeal are complex and substantial. Appellants seek reversal of a ruling below that seriously undermines uniform federal regulation of labor disputes affecting commerce and conflicts with settled legal authority, including the relevant precedent of the Supreme Court, this Circuit and other federal courts. Appellants therefore believe that oral argument is appropriate in this case.

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STATEMENT OF JURISDICTION

The district court had subject matter jurisdiction under 28 U.S.C. § 1331, as this action arose under the Railway Labor Act, 45 U.S.C. §§ 151-188, and the Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. § 1961 *et seq.* The court had supplemental jurisdiction over plaintiffs' state claims under 28 U.S.C. § 1367(a). United Mine Workers v. Gibbs, 383 U.S. 715, 725 (1966).

The district court entered a Memorandum Opinion and Order on September 26, 2000 (R. 1607-25),¹ and a final judgment dismissing the action in its entirety on September 27, 2000. R. 1626-27. With one exception, the dismissal below was *with prejudice*. That portion of the case not dismissed with prejudice—a so-called “post-TRO” claim of tortious interference with contract against defendant Allied Pilots Association, based on flight delays and cancellations occurring after entry of a temporary restraining order under the Railway Labor Act—was dismissed *without prejudice* to refile in state court. R. 1622-25, 1626-27. On October 3, 2000, the Allied Pilots Association (together with those officers and representatives named as additional defendants below) filed their notice of appeal.

¹ Unless otherwise specified, all record references designated “R. ___” are to consecutively paginated Volumes 1-6 (encompassing pages 1-1629) of the original 12-volume record. Because the pagination begins again with the number 1 in each of the subsequent volumes 7-12, any references to material in those remaining volumes will include a specific Volume number preceding the page number (e.g., “R. 7-21”).

R. 1628-29.

Under 28 U.S.C. § 1291, dismissal without prejudice to refiling in another forum is a final, appealable order, see Hiras v. National R.R. Passenger Corp., 10 F.3d 1142, 1144 n.2 (5th Cir. 1994), and this Court has jurisdiction over an appeal contesting the District Court's failure to grant dismissal *with prejudice*. See 15A Wright, Miller & Cooper, Federal Practice and Procedure: Jurisdiction 2d §3914.6, at 535 (1992) ("a defendant must be allowed to appeal a dismissal without prejudice in order to argue that the dismissal should have been with prejudice").

QUESTIONS PRESENTED

I. Did the district court err by permitting airline customers to pursue supplemental state-law remedies against the Allied Pilots Association for a peaceful airline work stoppage that had been enjoined as a violation of the Railway Labor Act, instead of dismissing such “post-TRO” tortious interference claims *with prejudice* as required by controlling federal labor preemption law?

II. Did the district court err in failing to find that the plaintiffs’ “post-TRO” tortious interference claims against the Allied Pilots Association, which seek extra-contractual remedies for denial of scheduled airline transportation services, are also preempted by the Airline Deregulation Act and therefore should have been dismissed *with prejudice*?

STANDARD OF REVIEW

Both Question I and Question II are questions of law to be reviewed de novo.

STATEMENT OF THE CASE

This appeal by the Allied Pilots Association (“APA”) is the second of two appeals to reach this Court in litigation arising from a nationwide work stoppage by the union-represented pilots of American Airlines, Inc. (“American”).

The first lawsuit was brought in federal court by American to enforce the Railway Labor Act (“RLA”), which prohibits strikes over certain labor disputes. American’s RLA enforcement action resulted in a temporary restraining order enjoining any and all further refusals to work in violation of the RLA; a civil contempt proceeding culminating in substantial compensatory contempt fines against the APA and two union officers, which this Court upheld on appeal; and an agreed injunction and settlement stipulation resolving American’s original claims under the RLA. See American Airlines, Inc. v. Allied Pilots Ass’n, 228 F.3d 574 (5th Cir. 2000), aff’g 53 F. Supp.2d 909 (N.D. Tex. 1999).

After American obtained its TRO enforcing the RLA, and while contempt proceedings were still in progress, several American ticket holders brought their own lawsuits against the APA and its officers in various federal and state courts, including the U.S. District Court for the Northern District of Texas. Each of those lawsuits sought compensatory and punitive damages for the impact of the allegedly unlawful work stoppage on American’s customers. Though varying in

their particulars, each of the customer lawsuits complained, in substance, that the pilots' concerted refusal to work had caused cancellation and delay of scheduled American flights, with resultant economic injury to affected ticket holders. Those separate actions were ultimately consolidated into a single proceeding below, a putative class action by appellee Richard Kaufman and four other named plaintiffs asserting violations of the RLA, the Racketeer Influenced and Corrupt Organizations Act ("RICO"), and state common law. R. 1609-10.

On September 26, 2000, the court below dismissed the amended consolidated class action complaint in its entirety. R. 1626-27. The district court found that federal law required dismissal *with prejudice* of all claims asserted under federal law, as well as all but one portion of the plaintiffs' state tort claims. The court, however, dismissed *without prejudice* that portion of the claim of tortious interference with contract of carriage arising from continuation of the work stoppage after entry of the February 10 TRO. R. 1622-25, 1626-27. The APA and all other named defendants have appealed from that ruling, seeking dismissal of the remaining, "post-TRO" tort claims against the APA *with prejudice* because those claims, too, are preempted and barred by federal law.

