[If you need additional space for ANY section, please attach an additional sheet and reference that section.]

RM

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

RECEIVED
APR 10 2017
THOMAS G. BRUTON
CLERK, U.S. DISTRICT COURT

Kathleen Betts
(Name of the plaintiff or plaintiffs)

v.

(1) Airline Pilots Association
(2) United Airlines
(Name of the defendant or defendants)

CIVIL ACTION

1:17-cv-2709
Judge Thomas M. Durkin
Magistrate Judge Susan E. Cox

COMPLAINT OF EMPLOYMENT DISCRIMINATION

1. This is an action for employment discrimination.

2. The plaintiff is Kathleen Betts of the county of Santa Rosa in the state of FL.

3. The defendant is (1) Airline Pilots Association / (2) United Airlines, whose street address is (1) 9550 W. Higgins Rd / (2) 233 S. Wacker Dr 25th FLOOR, (city) (1) Rosemont / (2) Chicago (county) (1) Cook / (2) Cook (state) (1) IL / (2) IL (ZIP) (1) 60018 / (2) 60606
(Defendant's telephone number) (1) 847 825-4000 (United) / (2) 847-292-1700 (Air Line Pilots)

4. The plaintiff sought employment or was employed by the defendant at (street address)
(1) Denver Trainins Center (United) Denver, CO
(2) San Francisco Intl Airport, SF CA (city)
(3) Oakland Int. Airport, Oakland CA
(county) (state) (ZIP code)

[If you need additional space for ANY section, please attach an additional sheet and reference that section.]

5. The plaintiff [***check one box***]

(a) ☐ was denied employment by the defendant.

(b) ☐ was hired and is still employed by the defendant.

(c) ☒ was employed but is no longer employed by the defendant.

6. The defendant discriminated against the plaintiff on or about, or beginning on or about, (month) OCT, (day) 8, (year) 2016.

(Most recent) arbitration decision mailed to plaintiff on 10/5/17

7.1 ***(Choose paragraph 7.1 or 7.2, do not complete both.)***

(a) The defendant is not a federal governmental agency, and the plaintiff [*check one box*] ☑ *has not* ☐ *has* filed a charge or charges against the defendant asserting the acts of discrimination indicated in this complaint with any of the following government agencies:

(i) ☑ the United States Equal Employment Opportunity Commission, on or about (month)_____ (day)_____ (year)_____.

(ii) ☑ the Illinois Department of Human Rights, on or about (month)_____ (day)_____ (year)_____.

(b) If charges *were* filed with an agency indicated above, a copy of the charge is attached. ☐ YES. ☑ NO, **but plaintiff will file a copy of the charge within 14 days.**

It is the policy of both the Equal Employment Opportunity Commission and the Illinois Department of Human Rights to cross-file with the other agency all charges received. The plaintiff has no reason to believe that this policy was not followed in this case.

7.2 The defendant is a federal governmental agency, and

(a) the plaintiff previously filed a Complaint of Employment Discrimination with the defendant asserting the acts of discrimination indicated in this court complaint.

[If you need additional space for ANY section, please attach an additional sheet and reference that section.]

[If you need additional space for ANY section, please attach an additional sheet and reference that section.]

☐ Yes (month)_____ (day)_____ (year) _____

☑ No, did not file Complaint of Employment Discrimination Plaintiff is a unionized employee

(b) The plaintiff received a Final Agency Decision on (month)_____ (day) _____ (year) _____.

(c) Attached is a copy of the

(i) Complaint of Employment Discrimination,

☐ YES ☑ NO, but a copy will be filed within 14 days.

(ii) Final Agency Decision

☐ YES ☑ NO, but a copy will be filed within 14 days.

8. *(Complete paragraph 8 only if defendant is not a federal governmental agency.)*

(a) ☑ the United States Equal Employment Opportunity Commission has not issued a *Notice of Right to Sue.*

(b) ☐ the United States Equal Employment Opportunity Commission has issued a *Notice of Right to Sue*, which was received by the plaintiff on (month)_____ (day)_____ (year)_____ a copy of which *Notice* is attached to this complaint.

9. The defendant discriminated against the plaintiff because of the plaintiff's [***check only those that apply***]:

(a) ☑ Age (Age Discrimination Employment Act).

(b) ☐ Color (Title VII of the Civil Rights Act of 1964 and 42 U.S.C. §1981).

[If you need additional space for ANY section, please attach an additional sheet and reference that section.]

[If you need additional space for ANY section, please attach an additional sheet and reference that section.]

(c) ☑ Disability (Americans with Disabilities Act or Rehabilitation Act)

(d) ☐ National Origin (Title VII of the Civil Rights Act of 1964 and 42 U.S.C. §1981).

(e) ☐ Race (Title VII of the Civil Rights Act of 1964 and 42 U.S.C. §1981).

(f) ☐ Religion (Title VII of the Civil Rights Act of 1964)

(g) ☑ Sex (Title VII of the Civil Rights Act of 1964)

10. If the defendant is a state, county, municipal (city, town or village) or other local governmental agency, plaintiff further alleges discrimination on the basis of race, color, or national origin (42 U.S.C. § 1983).

11. Jurisdiction over the statutory violation alleged is conferred as follows: for Title VII claims by 28 U.S.C.§1331, 28 U.S.C.§1343(a)(3), and 42 U.S.C.§2000e-5(f)(3); for 42 U.S.C.§1981 and §1983 by 42 U.S.C.§1988; for the A.D.E.A. by 42 U.S.C.§12117; for the Rehabilitation Act, 29 U.S.C. § 791.

12. The defendant [***check only those that apply***]

(a) ☑ failed to hire the plaintiff.

(b) ☑ terminated the plaintiff's employment.

(c) ☑ failed to promote the plaintiff.

(d) ☐ failed to reasonably accommodate the plaintiff's religion.

(e) ☑ failed to reasonably accommodate the plaintiff's disabilities.

(f) ☑ failed to stop harassment;

(g) ☑ retaliated against the plaintiff because the plaintiff did something to assert rights protected by the laws identified in paragraphs 9 and 10 above;

(h) ☐ other (specify): Plaintiff has a long running employment grievance concerning the actions of United. The first discrimination occurred in 1996. Most recent Oct 8, 2016.

[If you need additional space for ANY section, please attach an additional sheet and reference that section.]

[If you need additional space for ANY section, please attach an additional sheet and reference that section.]

please see complaint for specifics

13. The facts supporting the plaintiff's claim of discrimination are as follows:

please see complaint for specifics

14. ***[AGE DISCRIMINATION ONLY]*** Defendant knowingly, intentionally, and willfully discriminated against the plaintiff.

15. The plaintiff demands that the case be tried by a jury. ☑ YES ☐ NO

16. THEREFORE, the plaintiff asks that the court grant the following relief to the plaintiff [***check only those that apply***]

(a) ☐ Direct the defendant to hire the plaintiff.

(b) ☑ Direct the defendant to re-employ the plaintiff.

(c) ☐ Direct the defendant to promote the plaintiff.

(d) ☐ Direct the defendant to reasonably accommodate the plaintiff's religion.

(e) ☑ Direct the defendant to reasonably accommodate the plaintiff's disabilities.

(f) ☑ Direct the defendant to (specify): pay compensatory and punitive damages in accordance with law.

[If you need additional space for ANY section, please attach an additional sheet and reference that section.]

[If you need additional space for ANY section, please attach an additional sheet and reference that section.]

(g) ☑ If available, grant the plaintiff appropriate injunctive relief, lost wages, liquidated/double damages, front pay, compensatory damages, punitive damages, prejudgment interest, post-judgment interest, and costs, including reasonable attorney fees and expert witness fees.

(h) ☑ Grant such other relief as the Court may find appropriate.

(Plaintiff's signature)

Kathleen Betts

(Plaintiff's name)

Kathleen Betts

(Plaintiff's street address) is confidential but will provide if sealed

PLAINTIFF uses this address for all correspondence
PO BOX 361 GULF BREEZE FL 32562

(plaintiff is a victim of domestic violence)

(City)_____ (State)_____ (ZIP)_____

(Plaintiff's telephone number) (859) - 816 8927

Date: April 8 2017

[If you need additional space for ANY section, please attach an additional sheet and reference that section.]

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS

KATHLEEN BETTS/PLAINTIFF/pro se

vs

AIRLINE PILOTS ASSOCIATION (ALPA)
and UNITED AIRLINES /DEFENDANTS

Arbitration #2016-U-171-036

NDIL No: TBA

1:17-cv-2709
Judge Thomas M. Durkin
Magistrate Judge Susan E. Cox

COMPLAINT

PLAINTIFF'S REQUEST TO VACATE ARBITRATION DECISION DATED OCTOBER 5, 2016 DUE TO ALPA'S BREACH OF REPRESENTION AND UNITED AIRLINES UPHOLDING PLAINTIFF'S TERMINATION OF EMPLOYMENT

(HYBRID 301 ACTION)

PLAINTIFF'S REQUEST TO VACATE ARBITRATION DECISION DUE TO ARBITRATOR'S EXCEEDANCE OF SCOPE

1.COMES NOW THE PLAINTIFF requesting this Honorable Court to review and reverse United Airlines' decision to uphold plaintiff's termination and to review transcripts from the arbitration (and associated documents) to determine if ALPA committed a breach of duty to fairly represent the plaintiff. The plaintiff asks this Court in a separate request to determine if upholding the termination of the plaintiff was proper as the plaintiff claims the arbitrator violated the scope provisions of plaintiff's working agreement during the arbitration hearing and relied on said information in making her arbitration decision. The plaintiff claims that this Court has jurisdiction and the venue is appropriate as Chicago is the headquarters of United

Airlines and also the city where arbitration was held.

BACKGROUND

2. The plaintiff worked for almost twenty years as a pilot, holding several different employment positions during that course of time (1987-2007). Plaintiff was a pilot in the United States Navy until 1995. Plaintiff holds an Airline Transport Pilot rating with three type ratings allowing her to operate commercial jetliners. In 1996 she was hired by United Airlines. Six months after she began her employment at United she was wrongfully terminated by her supervisor. Plaintiff brought legal action against United in 1997 in Oakland, California. Plaintiff ultimately prevailed in the legal action. *Betts vs United Airlines,* 246 F.3d 672 (9th Circuit, 2000). ALPA did not represent the plaintiff in that legal action, stating that plaintiff could not prevail. The evidence presented to the jury indicated that representatives from United Airlines altered plaintiff's flight grades and published them to a third party in August and/or September 1996. After an eleven day jury trial, the jury agreed that United had committed defamation against the plaintiff and awarded her compensatory damages.

3. In 1998 plaintiff began work as a Federal Aviation Administration Operations Inspector at the Houston, Texas Flight Standards District Office. Plaintiff's duties were to monitor and report on Continental Airlines' adherence to FAA rules and regulations. From 2000-2002 the Plaintiff flew 737's at US Air. After 9-11, the plaintiff's employment was disrupted again; she then took a position as a paid contract consultant at ALPA in 2003. Plaintiff was eventually recalled to US Air. Plaintiff worked at US Air until March 2006. Plaintiff then joined Continental Airlines where she flew 737 glass cockpit aircraft until June 2007 (B737-700, 800, and 900 models).

4. By June 2007 the plaintiff was having severe marital problems with her then-husband of 18 years, who had called in sick to his pilot employer in 2005 with what he claimed was was "severe depression". The former husband stayed on disability leave until January 2009 due to his mental health issues. The former husband resumed flying duties in January 2009. Plaintiff claims her former husband assaulted her in their home on June 3, 2007. Plaintiff underwent a knee operation and physical therapy due to her injuries caused by the former husband. Plaintiff began reporting the domestic violence committed against her to Continental in 2006.

{Plaintiff was placed on ALPA disability insurance through Guardian Insurance Corporation in 2008 for the 2007 assault. Plaintiff stayed on this leave until 2012}.

5. At arbitration in July 2016, the plaintiff heard testimony provided by the Employee Assistance Program (EAP)) which indicated that the EAP would speak with family members concerning an employee who had asked for assistance. The former husband claims he spoke with plaintiff's EAP during his mental health leave to discuss the plaintiff without her knowledge. Plaintiff had not authorized such conversations. It is apparent that the then- husband did not tell the plaintiff's EAP that **he was on a psychiatric leave of absence during any discussion he had with them.**

6. On her own volition, plaintiff decided to attend alcohol and drug rehab in 2007/2008. Plaintiff would like to stress to the Court that she did not ever fail a drug or alcohol test at work; she was not removed from flight duties for having positive results on drugs or alcohol tests. (Plaintiff stopped flying after she was assaulted by her then-husband). The former husband visited the treatment center several times per week (against the center's own protocol). The former husband created havoc for the plaintiff during his visits. Plaintiff was trying to get away from her then-husband; that drove her decision to go to treatment in the first place. The former husband had raided the plaintiff's bank accounts leaving the plaintiff in financial ruins. The plaintiff had health insurance, however, and she believed that treatment would provide long-term counseling which would help her get through what had become an extremely nasty divorce. (The former husband later testified in a 2014 deposition that he had planned to poison the plaintiff during his divorce action. The plaintiff had young children; she became very concerned and wanted to be with them).

PLAINTIFF WAS WRONGFULLY TERMINATED BY CONTINENTAL AIRLINES ON APRIL 15, 2008. THE TERMINATION WAS UPHELD BY UNITED AIRLINES ON OCTOBER 5, 2016. PLAINTIFF WAS NOTIFIED BY US MAIL ON OR AFTER OCTOBER 8, 2016.

7. Plaintiff signed a Work Agreement with Continental in March 2008. The agreement stated that no one could alter the scope of the agreement. Plaintiff claims the arbitrator exceeded scope

at the July 12, 2016 arbitration hearing and also that the arbitrator based her decision heavily on issues that were outside of scope. The working agreement was prepared by ALPA. The only reason that the termination could be upheld (according to the arbitrator) is a determination that plaintiff drank alcohol the day of an April 15, 2008 breathalyzer test. However, by the end of the hearing United and the arbitrator were discussing other matters with the plaintiff, most of which allegedly happened before and after the plaintiff signed the Work Agreement with Continental in March 2008. Additionally, United maintains that there were two breathalyzer tests given to the plaintiff on April 15, 2008. Plaintiff maintains there was only one breathalyzer, as indicated by United's evidence presented at arbitration.

8. The recent position of the custodian of records is that there was one breathalyzer test and that the result was "changed" from one reading to another reading. To terminate plaintiff again due to altered records is unjustifiable. Plaintiff retrieved records from the record custodian. The records state that the clinical director in fact called the EAP and reported a breathalyzer result, wrongfully stating that plaintiff had drank alcohol.

9. Plaintiff was given a drug test and a breathalyzer on or about April 15, 2008. The "clinical director" was allegedly in charge of conducting testing and reporting on plaintiff's care to Continental's EAP. On or about April 15, 2008 (after the clinical director administered the breath and drug test) the result of the breathalyzer was recorded, scribbled over, and a new result was recorded. The new result was allegedly .02 (point 02). The original result appeared to be .00 (the result that was scribbled over). Plaintiff maintains that there was only one breathalyzer test, she had not been drinking, and that the clinical director had set her up. The husband spent a considerable amount of time at the treatment center with the clinical director outside of the presence of the plaintiff.

In 2007 Continental, United, and ALPA began merger discussions. The merger was completed in 2012. Evidently, plaintiff was switched over to United's seniority system during the time she was receiving long-term disability with Guardian Insurance. Long-term disability was retroactively applied to the time plaintiff's husband assaulted her in 2007 and caused her severe knee injuries while she was still on flight status at Continental.

10. ALPA refused to represent plaintiff at arbitration (for the second time in her career). The arbitrator claimed on July 12, 2016 that the only issue under review at arbitration was the breathalyzer test of April 15, 2008. The arbitrator and United exceeded scope at the hearing and plaintiff even asked the arbitrator if scope was being violated, not only by the arbitrator but by United's attorney.

Having worked as a paid contract consultant at ALPA, plaintiff believes that **had** ALPA represented her, scope would not have been exceeded. ALPA made no gesture to plaintiff (and there were several ALPA personnel at the arbitration hearing) when scope was actually being violated even though the plaintiff specifically mentioned that scope was being violated. The hearing was transcribed and the plaintiff has the transcription.

Plaintiff had some familiarity with scope since she had been a paid consultant to ALPA in 2003-2004. However, the extent of plaintiff's job experience was to inform pilots on how to file grievances; the plaintiff had never been to an actual arbitration hearing and was unfamiliar with the process and/or procedures utilized at grievance proceedings.

Arbitration hearing transcript, July 12, 2016:

Page 82, Arbitrator:

"the only thing we are here to do is to hear your testimony that bears on the question whether you were terminated properly for an alleged violation of your working agreement by **testing** positive for alcohol. It really is a very narrow inquiry for the Board".

Without plaintiff's express agreement, the inquiry at the arbitration hearing went from being "very narrow" to "broad". Even if plaintiff had agreed, no one could violate scope according to the hastily prepared work agreement that ALPA and Continental had plaintiff sign in March 2008.

11. United Airlines and the arbitrator both eventually raised questions at the hearing that had nothing to do with the originally stated grounds of plaintiff's termination, which had been specifically explained by the arbitrator and United's attorney before and during the arbitration hearing. The plaintiff's work agreement stated that no one could exceed scope. This would especially apply to an arbitrator knowingly exceeding scope in a hearing of an unrepresented

employee. Any testimony involving alleged incidents that occurred before (or after) the signing of the March 2008 working agreement of the plaintiff (except for the alleged breathalyzer reading on April 15, 2008 which was the only issue to be discussed in arbitration) should have been excluded from the decision to terminate the plaintiff.

Plaintiff also states that the altered breathalyzer should never have been relied upon by anyone. The final vote as indicated on the correspondence dated and mailed on October 5 2016 was 2:1 in favor of termination.

12. What makes this situation more reprehensible to the plaintiff is that United utilized two different types of scribbled upon records to terminate the plaintiff two separate times during her pilot career (using records from August and September 1996 and in April 2008). In both instances the records were scribbled upon such that the original results were altered or materially changed to indicate different information than what had actually transpired.

13. The plaintiff prevailed in the 1997 legal action brought against United for fabricating her pilot record and then terminating her for alleged performance issues. Those records were from August and September of 2008. The April 2008 record used to justify plaintiff's termination is the fabricated breathalyzer result of April 15, 2008. Both of these actions are inherently fraudulent. In both cases, ALPA stated they could not prevail in any suit to get plaintiff's employment back or in a suit for damages. Plaintiff states there is no excuse for an employer scribbling upon information on official documents, changing the record and then having the employer claim there is nothing wrong with their records.

LEGAL ARGUMENT

14. Plaintiff did not/does not admit to drinking alcohol on April 15, 2008. The medical record allegedly prepared by the clinical director states that the clinical director called the EAP, not the plaintiff.

15. In a hybrid 301 suit, the plaintiff must plead and indicate in the pleading that the union breached its duty of fair representation. The union failed to represent plaintiff in that they were arbitrary, discriminatory, and/or utilized bad faith in regard to the handling of the

grievance/arbitration procedure. Plaintiff was not drinking or doing drugs at work. It was never even alleged that plaintiff was drinking or doing drugs on pilot duty. Last September two United pilots were arrested in Scotland for being legally intoxicated on a taxiway. The individuals will likely be returned to flight status according to ALPA.

16. The arbitrator wrote in her decision that the union had provided "technical assistance" to aid the plaintiff. Plaintiff submits to the Court that technical assistance with a fax machine is **not the same as representation.** Plaintiff further believes that the issue concerning exceedance of scope would not have happened had ALPA been representing her. Plaintiff makes the claim that the arbitration outcome was more than likely affected by the union's breach of representation.

17. The two aforementioned pilots who were drunk (over legal limits) on the taxiway in September 2016 have received representation while plaintiff did not. ALPA, United, and the arbitrator knew of that development **after** the arbitration hearing and **before** the results of the arbitration were decided. The plaintiff claims that union representation in matters concerning drinking are arbitrary (plaintiff did not drink on the job, yet pilots who drank on the job, who were illegally intoxicated, and who had over a hundred passengers on board their aircraft received representation). The pilots who are represented are both white men; the plaintiff is a female. Such action is discriminatory. Plaintiff further believes that age discrimination likely has a factor in the decision to terminate the plaintiff.

18. Additionally, since plaintiff had a prior legal action against United Airlines, she believes that is also a reason why United and ALPA acted in bad faith. ALPA certainly knew of the prior legal action. The plaintiff has used only one ALPA seniority number for the past 21 years. The plaintiff was likely viewed by some at Continental as a whistleblower, as the plaintiff was a government regulator at Continental after she was terminated by United. Plaintiff also believes that some United employees disliked the fact that the plaintiff filed suit against United in 1997 for the fabrication of her flight records (which were published to third parties.

19. The lack of representation in both instances also indicates ALPA's bad faith effort towards the plaintiff. The fact that her labor union failed to represent her twice in cases involving doctored or altered records indicate such. Plaintiff has used the same ALPA number throughout her piloting career and has solely flown for ALPA carriers. Furthermore, the plaintiff has no accidents or incidents on her airline record. Plaintiff thus submits that ALPA has been arbitrary, discriminatory, and also has acted in bad faith.

20. Had the union exercised reasonable diligence in its representation, it would have uncovered exculpatory evidence which would have likely exonerated the plaintiff. Breach of representation seriously undermines the integrity of the arbitral process. Breach of representation also removes the bar of finality provisions of the contract and/ or working agreement associated with arbitration outcomes.

21. On or after October 8, 2016 the plaintiff received United's termination decision in the US mail. Plaintiff states her complaint is timely and that 6 months has elapsed since she received the decision. Plaintiff did not know the outcome of arbitration until that date; she had hoped that United or the arbitrator would have voted for her. If that had been the case, the plaintiff would have been reinstated and there would have not been a need to write this complaint. Plaintiff originally requested a five- member board, but the arbitrator dismissed that idea before arbitration began. From her experience at ALPA, the plaintiff understands that an airline will pick an arbitrator who has a track record of voting in favor of the airline. (ALPA routinely strikes arbitrators who are likely to vote for the company over those they represent) On the flip side this also guarantees that certain arbitrators will continue to have a lucrative business with management of a particular airline.

22. WHEREFORE, the plaintiff requests that the Court order plaintiff to be reinstated to pilot status. Plaintiff would also accept employment as promulgated in the Seventh Circuit decision of 2012, ***EEOC v United Airlines,*** 1:10-CV-01699, US District Court No. District of Illinois, EEOC v United Airlines, No. 11-1774, 7th Cir.). Plaintiff has a hematology disorder and is receiving disability. Plaintiff believes if she cannot return to flight status that she should be accommodated under the ADA for her hematology disorder.

23. Regardless whether or not United is ordered to reinstate plaintiff to a pilot position or another position where she can be accommodated under ADA for her hematology illness, the plaintiff requests reasonable compensatory damages and as well as court costs. (At the arbitration hearing, the plaintiff specifically mentioned EEOC v United Airlines (2012) in an attempt to procure other employment at United). United Airlines' attorney was not only adamantly against this, but specifically called the case "United v EEOC". {United applied for certiorari to the US Supreme Court in 2013. The US Supreme Court denied hearing and upheld the law in the Seventh Circuit Court of Appeals}.

24. If the Court so desires, plaintiff believes United should be assessed punitive damages due to United's long history of being placed on consent decrees and United's history concerning other violations of federal labor law. Due to Continental's wrongful termination of plaintiff in 2008 and United's upholding of the termination in 2016 **as well as** the failure of the union to properly represent the plaintiff in that they breached their duty of fair representation, the plaintiff asks for a combination of remedies. Plaintiff also states that United/and the arbitrator exceeded the scope of plaintiff's working agreement.

25. Specifically, plaintiff requests to be reinstated to pilot status. Plaintiff requests ADA accommodation in other suitable employment at United commensurate with plaintiff's education and work skills if for any reason she is not returned to flight status. Plaintiff requests compensatory damages in the reasonable amount of $500,000 for back wages and the loss of other financial benefits she would have received as a pilot. Plaintiff has suffered extensive humiliation and emotional distress due to the termination(s). The relied upon breathalyzer test to uphold termination is defamatory. If plaintiff is not returned to flight status or other suitable employment she requests an upward modification of compensatory damages.

PRAYER FOR RELIEF

Very respectfully,

Kathleen Betts

Kathleen Betts
PO BOX 361
Gulf Breeze FL 32562
850-816-8927

I hereby state that the following parties have been served this _____day of April, 2017 via service of process as delineated in the local rules and in the state of Illinois civil rules of procedure.

Jessica Kimsborough (for)
United Airlines
WHQLR
233 S. Wacker Drive
25th floor
Chicago, IL 60606

John Schleder (for)
ALPA
9550 West Higgins Rd
Suite 1000
Rosemont, IL 60018

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS

Kathleen Betts	)	Case No: 17 C 2709
v.	)	Judge: Thomas M. Durkin
Airline Pilots Association, et al	)	

ORDER

Plaintiff's motion for attorney representation is granted. [15] This Court hereby recruits attorney Michael Persoon, Despres, Schwartz, and Geoghegan, Ltd., 77 W. Washington, Ste. 711, Chicago, IL 60602, 312-372-2511, mpersoon@dsgchicago.com to assist plaintiff in this action.

Date: 7/10/2017

/s/ Thomas M. Durkin

UITED STATES DISTRICT COURT
FOR THE Iorthern District of Illinois – CM/ECF LIVE, Ver 6.1.1.2
Eastern Division

Kathleen Betts

Plaintiff,

v.

Case No.: 1:17–cv–02709
Honorable Thomas M. Durkin

Airline Pilots Association, et al.

Defendant.

IOTIFICATIOI OF DOCKET EITRY

This docket entry was made by the Clerk on Thursday, July 27, 2017:

MINUTE entry before the Honorable Thomas M. Durkin:Defendants' motions to dismiss [18][34] are entered and continued generally. Plaintiff's motion for extension of time [27] is denied as moot. Motion hearing held on 7/27/2017. Plaintiff is granted leave to file an amended complaint by 8/25/2017. Defendants are to answer or otherwise plead 21 days after receipt of the amended complaint. If any motions to dismiss are filed, counsel are directed to notice them up for presentment. Discovery is stayed. Mailed notice(srn,)

ATTEITIOI: This notice is being sent pursuant to Rule 77(d) of the Federal Rules of Civil Procedure or Rule 49(c) of the Federal Rules of Criminal Procedure. It was generated by CM/ECF, the automated docketing system used to maintain the civil and criminal dockets of this District. If a minute order or other document is enclosed, please refer to it for additional information.

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UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

KATHLEEN BETTS,	)	
	)	
Plaintiff,	)	
	)	No. 17 C 2709
v.	)	
	)	
UNITED AIRLINES,	)	Judge Thomas M. Durkin
	)	
Defendant.	)	

MEMORANDUM OPINION & ORDER

Plaintiff Kathleen Betts sued defendant United Airlines under the Railway Labor Act, 45 U.S.C. § 153 (First) (q) seeking to vacate a System Board of Adjustment award that upheld her discharge from her job as a pilot with Continental Airlines (which later merged with United). Currently before the Court is United's motion for summary judgment [51]. For the reasons explained below, the Court grants United's motion.

Background

Continental Airlines employed Betts as a pilot until her termination on April 16, 2008. R. 53 ¶ 4 (Betts's Response to United's L.R. 56.1 Statement of Facts). After Betts failed a "no notice" test for alcohol, Continental and Betts entered into a Last Chance Agreement ("Agreement") on March 12, 2008. *Id.* ¶ 5.

Paragraph 1 of the Agreement required Betts to complete a "course of rehabilitation . . . recommended by [the airline's Employment Assistance Program ('EAP')]." *Id.* ¶¶ 6-7. Paragraph 1 has four subsections, a through d. R. 51-2 at 41-

42. Paragraph 1a obligated Betts to execute an undated letter of resignation that could be used to terminate her if she "fail[ed] to satisfy any of the terms and conditions" of "the rehabilitation directed by EAP or the terms and conditions of this Agreement." R. 53 ¶¶ 6, 8. Paragraph 1b provided that as an "express condition for her continuing employment," "[f]or the remainder of her career with [the airline], any use of alcohol or illicit drugs will be considered a violation of this Agreement." *Id.* ¶ 9. Paragraph 1b further stated that "BETTS expressly agrees that her use of any non-prescription medication or other substance that contains alcohol . . . shall be considered a violation of this Agreement and shall result in the termination of BETTS' employment." R. 51-2 at 41. Paragraph 1c required Betts to maintain monthly contact with the EAP manager "[d]uring the rehabilitation/treatment period." *Id.* Paragraph 1d provided for "a return-to-work drug and alcohol test" on "release by EAP to return to work." *Id.* at 42.

Paragraph 2 of the Agreement provided that "BETTS shall be reinstated to a pilot position . . . upon satisfactory performance of her obligations under this Agreement." *Id.* Finally, paragraph 6 provided that Betts and her union "expressly agree that any violation of the terms outlined above will be considered a violation of the conditions of continued employment and that BETT's employment will be terminated as a result." R. 53 ¶ 10.

The same day Betts signed the Agreement, she also signed a Continental Airlines Authorization and Release ("Release") stating that she authorized the EAP "to use, disclose and exchange . . . health information" with staff of Betts's medical

care provider including "information related to Attendance, Assessment, Diagnosis, Recommendations, Treatment/Aftercare Plan, Progress Notes, Medical/ Psychiatric/ Psychological and Chemical Dependency Notes/ Documentation (including lab work)." *Id.* ¶ 11; R. 51-2 at 164. The parties dispute whether this authorization satisfied Health Insurance Portability and Accountability Act ("HIPAA") requirements and whether it authorized Betts's medical care provider to disclose Betts's treatment information to United. R. 56 ¶ 6 (United's Response to Betts's L.R. 56.1 Statement of Additional Facts).

On March 15, 2008, Betts was admitted to her medical care provider for treatment. R. 53 ¶ 12. While in treatment, on April 3, 2008, Betts signed a Continental Airlines EAP Statement of Confidentiality ("Confidentiality Statement") providing that information obtained from the EAP would be "held in confidence with . . . exceptions," including "(4) Management Referrals, SAP, and or Fitness-For Duty Evaluation – be advised information will be given to Management; (5) For co-ordination of on-going referral, communication will occur between the EAP staff and the managed mental health care company." *Id.* ¶ 13; R. 51-2 at 160. As with the Release, the parties dispute whether this Confidentiality Statement satisfied HIPPA or authorized the medical care provider to disclose Betts's treatment information to United. R. 56 ¶ 5.

Betts continued treatment at the medical care provider until April 11, 2008, when she left on a pass to go home. R. 53 ¶ 14. Betts returned to the medical care provider late on April 15, 2008, and a breath analysis tested positive for alcohol. *Id.*

¶ 15. The medical care provider told Betts that the EAP had been contacted and that "drinking would change her options." *Id.* ¶ 16. On a conference call with the EAP and the medical care provider, Betts "admitted and informed the EAP and chief pilot of her situation," and "owned up to drinking three glasses of wine on Sunday, Monday and Tuesday morning before her return to the [medical care provider]." *Id.* ¶ 17.

Betts failed to attend a meeting scheduled for April 16, 2008 with Continental to discuss treatment options. *Id.* ¶ 19. That day, Continental terminated Betts for violating the Last Chance Agreement. *Id.* ¶ 20. Betts requested an appeal of the termination decision on May 2, 2008. *Id.* ¶ 22. Betts's grievance was not resolved prior to Continental's merger with United in 2010. *Id.* ¶ 23.

A collective bargaining agreement between Betts's union and United provided for arbitration of Betts's grievance. *Id.* ¶ 26. The union declined to prosecute Betts's grievance on her behalf. *Id.* ¶ 27. Betts therefore proceeded *pro se* at a July 2016 arbitration hearing before a three-member System Board of Adjustment ("Board"). *Id.* ¶¶ 27-28. The Board denied Betts's grievance in October 2016, finding that the airline had just cause to terminate Betts after she failed the breathalyzer test in April 2008. *Id.* ¶ 29. The Board's award states:

> a majority of the Board finds that [Betts] violated the [Agreement] when she tested positive for alcohol within one month of signing the [Agreement] and while still participating in the in-patient treatment program at [the medical care provider], even if she was awaiting admission to a halfway house. Thus, [Betts's] termination was pursuant to paragraphs 1 and 1a of the [Agreement], as quoted above.

Id. ¶ 30. The Board explained that the Last Chance Agreement forbid Betts "from using *any* alcohol, for the duration of her employment," and that the airline "received a business record from [the medical care provider], i.e., a report of a drug screen and breathalyzer test of [Betts], and the [airline] reasonably relied thereon." *Id.* ¶ 31. The Board explained that its finding would not

> change even if [Betts] was, as she alleges, in the process of transitioning from an in-patient treatment program at the [medical care provider] to a halfway house. The entirety of the in-patient treatment plan, any transition to a halfway house and any after care prescribed for [Betts] are all under the auspices of the EAP and, therefore, covered by the [Last Chance Agreement].

Id. ¶ 32.

Betts sued the Airline Pilots Association in April 2017. R. 1. After this Court appointed counsel, Betts filed an amended complaint dismissing the Airline Pilots Association and naming United instead. R. 45. The amended complaint makes two claims: (1) Count I alleging that the Board award fails to "draw its essence" from Betts's Last Chance Agreement; and (2) Count II alleging that the Board award violates public policy. R. 45. In January 2018, United moved for summary judgment on both counts. R. 51.

Standard

Summary judgment is appropriate "if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a); *see also Celotex Corp. v. Catrett*, 477 U.S. 317, 322-23 (1986). The Court considers the entire evidentiary record and must view all of the evidence and draw all reasonable inferences from that evidence in the light

most favorable to the nonmovant. *Horton v. Pobjecky*, 883 F.3d 941, 948 (7th Cir. 2018). To defeat summary judgment, a nonmovant must produce more than a "mere scintilla of evidence" and come forward with "specific facts showing that there is a genuine issue for trial." *Johnson v. Advocate Health and Hosps. Corp.*, 892 F.3d 887, 894, 896 (7th Cir. 2018). Ultimately, summary judgment is warranted only if a reasonable jury could not return a verdict for the nonmovant. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986).

Analysis

This case arises under the Railway Labor Act, 45 U.S.C. § 153 First (q), "which establishes a framework for the efficient resolution of labor disputes within the transportation sector." *Pokuta v. Trans World Airlines, Inc.*, 191 F.3d 834, 839 (7th Cir. 1999). "In keeping with the purpose of that framework, and with the statute itself, which permits federal courts to intervene only in limited circumstances, judicial review of a board of arbitrators' decision is 'among the narrowest known to law.'" *Id.* (quoting *Union Pacific R.R. Co. v. Sheehan*, 439 U.S. 89, 91 (1978)).

"Generally speaking, a federal court has jurisdiction to review the Board's decision only when it is asserted that (1) the Board failed to comply with the requirements of the Railway Labor Act; (2) the Board failed to confine itself to matters within its own jurisdiction; or (3) the Board or one of its members engaged in fraud or corruption." *Id.* (citing *Sheehan*, 439 U.S. at 91). Count I—which argues that the Board's decision failed to "draw its essence" from the Last Chance

Agreement—falls within the second category. *E.g.*, *Office & Prof'l Employees Int'l Union Local 109 v. Air Methods Corp.*, 2010 WL 3700024, at *5 (E.D. Wis. Sept. 14, 2010). Count II—alleging a violation of public policy—does not fall within any of the three categories. But Betts urges this Court to join a number of courts of appeals in holding that in addition to the three categories, RLA arbitration awards are subject to public policy review. *E.g.*, *Union Pacific R.R. Co. v. United Transp. Union,* 3 F.3d 255, 259-60 (8th Cir. 1993).

I. Count I: Award Drawing Essence From Last Chance Agreement

"The Board's jurisdiction 'is limited exclusively to the interpretation or application of existing agreements': therefore, the [challenged] decision must get its essence from the [Last Chance Agreement]." *Office & Prof'l Employees*, 2010 WL 3700024, at *5 (quoting *Wilson v. Chicago & N. W. Transp. Co.*, 728 F.2d 963, 967 (7th Cir. 1984)). Betts maintains in Count I that the Board's award did not "draw its essence" from the Last Chance Agreement because the Agreement prohibited alcohol consumption only during the remainder of Betts's "career," and the Board affirmed termination of Betts for alcohol consumption outside of her "career." R. 54 at 3-6. Betts relies on Paragraph 1b of the Agreement, which provided as an "express condition for her continuing employment" that "[f]or the remainder of her career with [the airline], any use of alcohol or illicit drugs will be considered a violation of this Agreement." R. 53 ¶ 9. Betts argues that because the Agreement provides for a "treatment period" followed by "release by EAP to return to work" and "reinstate[ment] to a pilot position," the treatment period was not part of Betts's

"career." R. 54 at 4-5. Betts therefore argues that consuming alcohol during the treatment period did not violate the Agreement.

Betts's argument fails at the outset because it asks the Court to decide whether the Board properly interpreted the Agreement. *See* R. 54 at 1 (Betts argues that the Board "made an untenable interpretation" of the Agreement). The sole question for the Court is whether the Board interpreted the Agreement at all or disregarded it. *See, e.g., Lyons v. Norfolk & W. Ry. Co.*, 163 F.3d 466, 469 (7th Cir. 1999) (a party can complain if "the arbitrators don't interpret the contract" or "disregard the contract"). Whether the Board misinterpreted the Agreement is not within the scope of this Court's review. The Seventh Circuit spelled this out in no uncertain terms in *Lyons*:

> [A]s we have said too many times to want to repeat again, the question for a federal court asked to set aside an arbitration award . . . is not whether the arbitrator erred in interpreting the contract; it is not whether they clearly erred in interpreting the contract; it is not whether they grossly erred in interpreting the contract; it is whether they interpreted the contract. If they did, their interpretation is conclusive.

Id. at 470.

There is no question in this case that the Board interpreted the Agreement. The Board specifically found a violation of "paragraphs 1 and 1a" of the Agreement, including the provision in paragraph 1 forbidding Betts "from using *any* alcohol, for the duration of her employment." R. 53 ¶¶ 30-31.[1] Not only that, but the Board

[1] The Board mentioned paragraphs 1 and 1a, and not 1b specifically. But paragraph 1b is part of paragraph 1, and the Board referred directly to paragraph 1b's provisions prohibiting alcohol use.

expressly addressed and rejected Betts's argument that her consumption should not count because it occurred during her treatment period, explaining that "[t]he entirety of the in-patient treatment plan, any transition to a halfway house and any after care prescribed" are all "under the auspices of the EAP, and therefore, covered by the [Last Chance Agreement]." *Id.* ¶ 32; *see also* R. 54 at 4 (Betts acknowledges that the Board "facially engaged with the language of the 'remainder of her career' clause"). The fact that the Board interpreted the Agreement ends the inquiry. It is not for this Court to say whether the Board's interpretation was correct. *See, e.g.*, *Lyons*, 163 F.3d at 470 (where Board found that it was not unjust for employer to fire plaintiff for failing to provide a urine sample when ordered to do so, the Board "was interpreting the contractual term 'unjust,'" and because the Board "interpreted the contract, its interpretation is conclusive").

Nor is this a case, as Betts claims, where the Board did not "*say* [its] award is noncontractual," but there is no "possible interpretive route to the award." *See Chicago Typographical Union No. 16 v. Chicago Sun-Times, Inc.*, 935 F.2d 1501, 1506 (7th Cir. 1991) (holding that even where interpretive route is not spelled out or there is an "error in interpretation," the award stands as long as there is a "possible interpretive route to the award"). The Board found Betts's treatment period to be "under the auspices of the EAP." R. 53 ¶ 32. This conclusion is supported by Paragraph 1's prefatory language, which provides for "rehabilitation/treatment . . . directed and facilitated by EAP" and a "course of rehabilitation . . . recommended by the EAP," followed by subparagraphs a through d laying out specific terms of that

course of rehabilitation. R. 51-2 at 41 (¶ 1). The Board found that Betts failed to satisfy the EAP requirements when she violated the provisions in ¶ 1b proscribing use of alcohol (which, notably, contains no carveout for the treatment period). *Id.* (¶ 1b) (no alcohol "[f]or the remainder of [Betts's] career"); *see also id.* ("BETTS expressly agrees that her use of . . . alcohol . . . shall be considered a violation of this Agreement and will result in termination of BETTS's employment."); *id.* at 43 (¶ 1a) (failure to satisfy any terms and conditions of "the rehabilitation directed by EAP" will result in termination). Paragraph 1b makes lack of alcohol use "[f]or the remainder of her career" an "express condition of [Betts's] *continuing* employment" (*id.* (¶ 1b) (emphasis added)), which further supports the interpretation that Betts's "career" persisted during her treatment period. Indeed, Betts's employment with the airline did not end until *after* her violation of the Last Chance Agreement. R. 53 ¶ 4. There was no "willful disregard of the contract" here, *Chicago Typographical*, 935 F.2d at 1506—far from it. The Court therefore grants United's motion for summary judgment on Count I.

II. Count II: Public Policy

United argues as a threshold matter that the RLA does not allow for public policy review of arbitration awards. The Supreme Court denied a petition for writ of certiorari to address this issue in 2014. *Air Methods Corp. v. Office & Prof'l Employees Int'l Union*, 134 S. Ct. 2295 (2014). United relies on older district court cases finding no public policy review permitted under the RLA (including a case in this district), all of which emphasize the strictness of the Supreme Court's language

delineating the three categories of review in *Sheehan*. *See Bhd. of R.R. Signalmen v. Union Pac. R.R. Co.*, 1997 WL 80956, at *2 (N.D. Ill. Feb. 21, 1997); *Denver & Rio Grande W. Ry. Co.*, 963 F. Supp. 946, 948-49 (D. Colo. 1997); *NetJets Aviation, Inc. v. Int'l Bhd. of Teamsters*, 2006 WL 1580216, *6 (S.D. Ohio June 2, 2006). But these district court decisions have not been adopted by the courts of appeals that have addressed the issue, which instead have either found public policy review available or declined to decide the issue. *See, e.g.*, *United Transp. Union*, 3 F.3d at 258 (public policy review available under the RLA); *Delta Air Lines, Inc. v. Air Line Pilots Ass'n*, 861 F.2d 665, 674 (11th Cir. 1988) (same); *Nat'l R.R. Passenger Corp. v. Fraternal Order of Police, Lodge 189 Labor Comm.*, 855 F.3d 335, 338 (D.C. Cir. 2017), *cert. denied*, 138 S. Ct. 979 (2018) (same); *Air Methods Corp. v. OPEIU*, 737 F.3d 660, 669 (10th Cir. 2013) ("we do not need to decide this issue because we hold that the arbitrator's award in this case did not violate public policy"); *NetJets Aviation, Inc. v. Int'l Bhd. of Teamsters, Airline Div.*, 486 F.3d 935, 939 (6th Cir. 2007) ("assuming" without deciding "that public policy review is permitted under the RLA").

The Seventh Circuit has not decided whether public policy review is available for Board awards under the RLA. But at least one court in this district has found such review available based on the Seventh Circuit's decision in *Chrysler Motors Corp. v. Int'l Union, Allied Indus. Workers of Am., AFL-CIO*, 959 F.2d 685, 687 (7th Cir. 1992), and the Supreme Court's decision in *W.R. Grace & Co. v. Local Union 759, Int'l Union of United Rubber*, 461 U.S. 757, 766 (1983), reviewing arbitrators'

interpretations of collective bargaining agreements outside the RLA-context for violations of public policy. *See Held v. Am. Airlines, Inc.*, 2007 WL 433107, at *7 (N.D. Ill. Jan. 31, 2007).

Although it appears likely the Seventh Circuit would recognize public policy review of an award by the Board under the RLA, this Court finds it unnecessary to decide the issue. Even assuming authority to do so, the Court would not vacate the arbitration award here on public policy grounds. "For an arbitration award to violate public policy, the policy involved must be an explicit public policy that is well defined and dominant, and is . . . ascertained by reference to the laws and legal precedents and not from general considerations of supposed public interest." *Air Methods*, 737 F.3d at 669; *accord Chrysler*, 959 F.2d at 687. The public policy rationale for refusing to enforce an arbitration award is "a limited exception" in which the Court "ask[s] only whether the award itself . . . , and not the underlying reasons for the award, violate[s] public policy." *Air Methods*, 737 F.3d at 669.

Courts have vacated arbitration awards under the RLA on public policy grounds to correct situations that are the exact opposite of this case—*i.e.*, where a pilot or a train operator was *reinstated* despite using drugs or alcohol instead of *terminated* for using drugs or alcohol. In *United Transp. Union*, for example, the Eighth Circuit found that an award reinstating a train brakeman despite evidence indicating that he caused a train accident while using alcohol and drugs violated "a well-defined and dominant public policy against a railroad's employment of individuals whose impaired judgment due to the use of drugs or alcohol could

serious threaten public safety." 3 F.3d at 261-62. The Eleventh Circuit in *Delta Air Lines* held similarly in the context of a pilot who "flew an airplane while drunk" and was reinstated. 861 F.2d at 674. Betts cites no case vacating an award on public policy grounds in circumstances like hers.

Betts nevertheless claims that it would violate public policy for this Court to enforce the Board's award because it "was based on evidence gained in violation of public policy." R. 54 at 1. Specifically, Betts argues that her breathalyzer test results never should have been disclosed by the provider to the airline. *Id.* at 2.

The Court rejects this argument for two reasons. *First*, Betts's argument does not concern the "award itself." *Air Methods*, 737 F.3d at 669. Betts's argument instead focuses on the underlying process pursuant to which the EAP gained its evidence. "In considering whether to refuse to enforce an arbitration award based on public policy, the question for the court is not whether any underlying actions by the parties violated public policy, but whether the specific actions ordered by the award do so." *Bhd. of Locomotive Engineers & Trainmen v. Union Pac. R. Co.*, 882 F. Supp. 2d 1032, 1040 (N.D. Ill. 2012), *aff'd sub nom. Bhd. of Locomotive Engineers & Trainmen, Gen. Comm. of Adjustment, Cent. Conference v. Union Pac. R. Co.*, 719 F.3d 801 (7th Cir. 2013). Because Betts's argument is not about a violation of public policy in the specific actions ordered by the Board, but instead concerns "underlying actions by the parties," it necessarily fails. *See id.*

Second, even looking beyond the award itself to the parties' underlying actions, Betts's argument still fails. Betts cites the patient-psychotherapist privilege

recognized in Fed. R. Evid. 501 and case law interpreting it, which recognize the policy import of confidentiality when persons are treated for addictions including alcoholism. R. 54 at 8-9. The problem with this argument is that Betts affirmatively waived confidentiality when she voluntarily signed the Release and again when she signed the Confidentiality Statement with its exception for communications between the medical care provider and the EAP. Betts also willingly signed the Last Chance Agreement requiring her to complete the course of rehabilitation recommended by the EAP, including refraining from using alcohol. As United points out, communication had to occur between the medical care provider and the EAP in order for the EAP to ensure compliance with the course of rehabilitation.

Betts interprets the Release and Confidentiality Statement as a one-way street, allowing the EAP and the airline to give information to the provider but not vice versa. This argument is contrary to the plain language of these documents. The Release authorized an "exchange" of information between the provider and the EAP, including related to "Assessment, Diagnosis . . . Medical/Psychiatric/Psychlogical and Chemical Dependency Notes/Documentation (including lab work)." R. 51-2 at 164. The Statement likewise made clear that "communication will occur between the EAP staff and the managed mental health care company." R. 51-2 at 160. And this makes good sense. The whole point of a last chance agreement is to know if an employee forfeits her last chance. If a release corresponding with a last chance agreement permitted one-way communication only, there would be no way for the employer learn about a violation from a medical service provider.

Betts also argues that the Release does not comply with HIPAA because it contains no expiration date, and that the Confidentiality Statement does not comport with HIPAA requirements to use plain language for waivers. This is not an objection Betts raised below, and it was not a subject of the Board's review. The Court declines to delve into the weeds of reviewing the Release and Confidentiality Statement for HIPAA compliance when Betts has not identified an "explicit public policy" that the Board's award itself violates. *See Air Methods*, 737 F.3d at 669; *see also United Transp. Union*, 3 F.3d at 261 (when determining whether award violates "an explicit public policy," the Court must "carefully observ[e] the [RLA's] proscription against judicial factfinding").

Additionally, separate and apart from the information provided from the provider pursuant to the Release and Confidentiality Statement that Betts says do not comply with HIPAA, Betts *admitted* to drinking alcohol on a conference call with the EAP. R. 53 ¶ 17. Betts takes issue with this fact being part of the administrative record, saying that but for the information provided by the provider to the airline about her breathalyzer result, Betts never would have made this admission. This speculation, even if true, does not show that Betts's admission was not properly made part of the administrative record.

In sum, there is no public policy basis for vacating the Board's award. The Court grants United's motion for summary judgment on Count II.

Conclusion

For the foregoing reasons, the Court grants United's motion for summary judgment [51].

ENTERED:

Thomas M Durkin

Honorable Thomas M. Durkin
United States District Judge

Dated: September 28, 2018

IN THE UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF ILLINOIS

Kathleen Betts
Plaintiff(s)
v.
United Airlines
Defendant(s)

Case No. 17 C 2709

JUDGMENT IN A CIVIL CASE

Judgment is hereby entered (check appropriate box):

☐ in favor of plaintiff(s)
and against defendant(s)
in the amount of $,

which ☐ includes pre–judgment interest.
☐ does not include pre–judgment interest.

Post-judgment interest accrues on that amount at the rate provided by law from the date of this judgment.

Plaintiff(s) shall recover costs from defendant(s).

☑ in favor of defendant(s) United Airlines
and against plaintiff(s) Kathleen Betts

Defendant(s) shall recover costs from plaintiff(s).

☐ other:

This action was *(check one)*:

☐ tried by a jury with Judge presiding, and the jury has rendered a verdict.
☐ tried by Judge without a jury and the above decision was reached.
☑ decided by Judge Thomas M. Durkin a motion for summary judgment.

Date: 9/28/2018

Thomas G. Bruton, Clerk of Court
/s/ Sandy Newland ,Deputy Clerk

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTICT OF ILLINOIS
EASTERN DIVISION

KATHLEEN BETTS (PRO SE)

Plaintiff

v.

No. 17 C 2709

UNITED AIRLINES

Honorable Thomas M Durkin

Defendant

NOTICE OF APPEAL AND MOTION FOR EXTENSION
OF TIME TO REMIT ADDITIONAL INFORMATION

1. Plaintiff Kathleen Betts moves to appeal the September 28, 2018 summary judgment rendered in favor of United Airlines. The plaintiff claims the Court erred on the merits of this case and was provided false information by Court-appointed attorney Michael Persoon Esq.

2. Michael Persoon is a Chicago based attorney who specializes in public policy. Persoon articulated an argument for Kathleen Betts (plaintiff) that is false on its face. Without consulting the arbitration transcript nor plaintiff Betts, Persoon stated falsehoods and transmitted them to the Court.

His arguments concerning the "essence" of the October 5, 2016

arbitration award and his "public policy" arguments were remitted to the Court without the approval of the plaintiff. Furthermore, Persoon dropped Airline Pilots Association as a party without the express approval of the plaintiff.

Persoon nor the Court has even notified the plaintiff of the September 28, 2018 summary judgment ruling. Thus, the plaintiff believes she is entitled to additional time to articulate her appeal on the merits.

Persoon argued that the arbitration board did not grasp the "essence" of the arbitration award and they also ignored public policy . However, he used arguments which were contrary to the testimony available in the arbitration transcript and instead parroted information discussed amongst himself and United attorney Mary Curry. Importantly, Persoon hid information from a Oakland CA federal lawsuit involving plaintiff Betts and United Airlines. The case was won on appeal in 2000, then settled out of court.

3. The plaintiff must hastily file this motion today (October 27, 2018) because neither Persoon nor the Court notified the plaintiff of the September 28, 2018 judgment.

4. The plaintiff and Persoon have no attorney-client privilege as they have never signed a representation agreement. The plaintiff argues that

Persoon is advocating a public policy argument that favors United Airlines' interests instead of the plaintiff's interests. Persoon claims he was "appointed by the Court" to represent the plaintiff. However, he is apparently doing the opposite and is representing the defendant's interests instead.

5. The plaintiff will wait for further instructions from the Court. The plaintiff has additional pertinent information concerning this case.

The information was given to the plaintiff on August 26, 2016- six weeks after the arbitration hearing and six weeks before the arbitration ruling. Persoon is aware of the evidence (which indicates fraud was committed as well as possible fraud upon the Court). Persoon ignored the evidence which is further proof that he was representing United's interests.

The plaintiff claims that the Court's September 28, 2018 ruling is based on fabricated evidence given to the Court by Persoon; he specifically ignored the evidence in the arbitration transcript.

Very respectfully,

Kathleen Betts (PRO SE)

Service will be provided to:

Mary Kathryn Curry, United Headquarters, 544 Wackerman Drive, Chicago IL 60604
And
Michael Persoon , 77 W Washington St, Chicago Il 60604

UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

Everett McKinley Dirksen United States Courthouse
Room 2722 - 219 S. Dearborn Street
Chicago, Illinois 60604

Office of the Clerk
Phone: (312) 435-5850
www.ca7.uscourts.gov

NOTICE OF DOCKETING - Short Form

October 30, 2018

The below captioned appeal has been docketed in the United States Court of Appeals for the Seventh Circuit:

Appellate Case No: 18-3336 Caption: KATHLEEN BETTS, Plaintiff - Appellant v. UNITED AIRLINES, INC., Defendant - Appellee
District Court No: 1:17-cv-02709 Clerk/Agency Rep Thomas G. Bruton District Judge Thomas M. Durkin Date NOA filed in District Court: 10/29/2018

If you have any questions regarding this appeal, please call this office.

form name: **c7_Docket_Notice_short_form**(form ID: **188**)

IN THE UNITED STATES COURT OF APPEAL FOR THE SEVENTH CIRCUIT

KATHLEEN BETTS
Plaintiff – Appellee

v.

No: 18-3336
District Court No: 1:17-cv-02709

UNITED AIRLINES, INC,
Defendant - Appellee

C.R. 28/ RULE 3 PLAINTIFF'S JURISDICTIONAL STATEMENT

1. Comes now the Plaintiff, providing a docketing statement to the Court.

2. Jurisdiction is based upon the following- Cause: Fed 28:1331, Nature of Suit: 190 Contract- other, Jurisdiction: Federal Question. This Court maintains subject matter jurisdiction over the parties.

3. This case has already been docketed in this Court, the notice of appeal and docket entries have been electronically transmitted and received by the Clerks.

4. United Airlines, INC, is incorporated in the city of Chicago. Chicago is United's primary place of business.

5. The date of entry of judgment was 10/29/2018.

6. To my knowledge, the filing of a new motion for trial has not been accomplished. There has been no objection nor appeal from Plaintiff's attorney concerning the 1/28/18 summary judgment ruling.

7. The Plaintiff had sent her "attorney" several documents mid-August. Plaintiff has not heard from the attorney since August. Several of the documents were confidential filings that should have been forwarded to Honorable Durkin. It may be presumed that Plaintiff's attorney abandoned her case. Plaintiff will ask for the documents back from her attorney.

8. On October 30, 2018 Honorable Durkin informed the Plaintiff (plaintiff's 3) to file all future filings with the Seventh Circuit.

9. Plaintiff nor her attorney did not notify the lower court on 11/12/18 that Plaintiff's attorney is withdrawing as counsel. Attorney's whereabouts are unknown. It is now Plaintiff's understanding that her attorney possibly did not sign on as attorney of record. We have no written agreement that he is, in fact, my attorney. He is in receipt of several documents which should have been attorney-client privileged documents. The status of these documents is unknown and attorney client privilege may have been broken.

10.The plaintiff claims arbitration was tainted (due to the actions of an Attorney on retainer who did not show for the hearing). The subsequent review by the lower court may have been tainted also due to the actions of the attorneys for both sides.

11.The lower court has instructed plaintiff to provide a notice of appeal and additional information to the court by 11/28/18. Plaintiff's attorney is in possession of the additional information he was supposed to bring to the lower court's attention. Plaintiff has filed a notice of appeal with this Court.

12. From this point on, barring other instructions, the plaintiff will contact the clerks on the 20th floor as Judge Durkin has ordered.

13. Plaintiff must serve a summons and a complaint upon the parties. Please provide a date that this must be accomplished by. Please, if it is no burden to the court, extend the deadline to submit Plaintiff's brief due to the events that have arisen.

Very respectfully,.

Kathleen Betts

Kathleen Betts
PO Box 361
Gulf Breeze FL 32562

850-736-3918

Service will Be provided to:

Mary Curry for United Airlines
Polsinelli
150 N Riverside Plaza
Chicago, IL 60606

Michael Persoon
77 W Washington St
Ste 711
Chicago, IL 60602

UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

Everett McKinley Dirksen United States Courthouse
Room 2722 - 219 S. Dearborn Street
Chicago, Illinois 60604

Office of the Clerk
Phone: (312) 435-5850
www.ca7.uscourts.gov

RULE TO SHOW CAUSE DISCHARGED

November 30, 2018

No. 18-3336	KATHLEEN BETTS, Plaintiff - Appellant v. UNITED AIRLINES, INC., Defendant - Appellee

Originating Case Information:

District Court No: 1:17-cv-02709
Northern District of Illinois, Eastern Division
District Judge Thomas M. Durkin

Upon consideration of the rule to show cause issued on November 28, 2018 by counsel for the appellant,

IT IS ORDERED that the rule to show cause is **DISCHARGED.** The court has received the appellant's filing entitled "Cir. 28/Rule 3 Plaintiff's Jurisdictional Statement," which satisfies the requirement that she file a docketing statement. The appellant is reminded that her opening brief and appendix are due December 10, 2018.

UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

Everett McKinley Dirksen United States Courthouse
Room 2722 - 219 S. Dearborn Street
Chicago, Illinois 60604

Office of the Clerk
Phone: (312) 435-5850
www.ca7.uscourts.gov

ORDER

February 13, 2019

Before

DAVID F. HAMILTON, *Circuit Judge*

No. 18-3336	KATHLEEN BETTS, Plaintiff - Appellant v. UNITED AIRLINES, INC., Defendant - Appellee
Originating Case Information:	
District Court No: 1:17-cv-02709 Northern District of Illinois, Eastern Division District Judge Thomas M. Durkin	

Upon consideration of the **LETTER**, which the court construes as a motion to supplement the record, filed on February 12, 2019, by the pro se appellant,

IT IS ORDERED that the motion is **DENIED WITHOUT PREJUDICE**. The appellant must make her request with the district court in the first instance pursuant to Circuit Rule 10(b). She may renew her request in this court if she is dissatisfied with the district court's ruling, but she must attach a copy of the district court's ruling to any renewed motion.

UITED STATES DISTRICT COURT
FOR THE Iorthern District of Illinois – CM/ECF LIVE, Ver 6.2.2
Eastern Division

Kathleen Betts

Plaintiff,

v.

Case No.: 1:17–cv–02709
Honorable Thomas M. Durkin

United Airlines, et al.

Defendant.

IOTIFICATIOI OF DOCKET EITRY

This docket entry was made by the Clerk on Wednesday, April 10, 2019:

MINUTE entry before the Honorable Thomas M. Durkin:Plaintiff's motion to supplement the record [68] is denied. Plaintiff seeks to supplement the record with a number of documents that were not before the Court during the summary judgment proceedings. She states that their omission was due to negligence and malice on the part of her appointed attorney, Mr. Michael Persoon. Unfortunately, that is not a sufficient basis for correction of the record now. Rule 10(e) allows for correction or modification of the record "[i]f any difference arises about whether the record truly discloses what occurred in the district court[.]" Fed. R. App. P. 10(e)(1). "[T]he difference must be submitted to and settled by [the district] court and the record conformed accordingly." Id. This rule is meant to ensure that the record reflects what really happened in the district court, but "not to enable the losing party to add new material to the record in order to collaterally attack the trial court's judgment." United States v. ElizaldeAdame, 262 F.3d 637, 641 (7th Cir. 2001). In this case, the documents submitted by Plaintiff were neither relied upon by the Court nor relevant to its decision; they cannot be added to the record pursuant to Rule 10(e). Mailed notice(srn,)

ATTEITIOI: This notice is being sent pursuant to Rule 77(d) of the Federal Rules of Civil Procedure or Rule 49(c) of the Federal Rules of Criminal Procedure. It was generated by CM/ECF, the automated docketing system used to maintain the civil and criminal dockets of this District. If a minute order or other document is enclosed, please refer to it for additional information.

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UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

Everett McKinley Dirksen United States Courthouse
Room 2722 - 219 S. Dearborn Street
Chicago, Illinois 60604

Office of the Clerk
Phone: (312) 435-5850
www.ca7.uscourts.gov

ORDER

April 15, 2019

No. 18-3336	KATHLEEN BETTS, Plaintiff - Appellant v. UNITED AIRLINES, INC., Defendant - Appellee
Originating Case Information:	
District Court No: 1:17-cv-02709 Northern District of Illinois, Eastern Division District Judge Thomas M. Durkin	

The following are before the court:

1. **EMERGENCY MOTION TO CLARIFY COURT OF APPEALS ORDER DKTS. 19 AND 31**, filed on April 10, 2019, by the pro se appellant.

2. **EXPARTE INFORMATION CONCERNING THE LOWER COURT**, filed on April 10, 2019, by the pro se appellant.

IT IS ORDERED that the "emergency motion to clarify" is **DENIED**. The district court docket reflects that the court denied the appellant's motion to supplement the record on April 10, 2019. To the extent the appellant is moving this court to supplement the record with these documents, the court concludes that such action is not appropriate because the documents were neither presented to nor considered by the district court when it entered judgment in this case. *See Gallo v. Mayo Clinic Health System-Franciscan Med. Ctr.*, 907 F.3d 961, 964 (7th Cir. 2018).

IT IS FURTHER ORDERED that any relief requested in the document labeled "Ex parte Information Concerning The Lower Court" is **DENIED**.

United States Court of Appeals

For the Seventh Circuit
Chicago, Illinois 60604

Submitted April 23, 2019*
Decided April 24, 2019

Before

MICHAEL S. KANNE, *Circuit Judge*

DAVID F. HAMILTON, *Circuit Judge*

AMY C. BARRETT, *Circuit Judge*

No. 18-3336

KATHLEEN BETTS,
Plaintiff-Appellant,

v.

UNITED AIRLINES, INC.,
Defendant-Appellee.

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division.

No. 17 C 2709

Thomas M. Durkin,
Judge.

ORDER

Kathleen Betts was fired from her job as a pilot after twice failing alcohol tests administered by her employer, Continental Airlines. After unsuccessfully challenging her discharge in arbitration proceedings, she sued under the Railway Labor Act, 45 U.S.C. § 153 First (q), seeking to vacate the arbitration award. We agree with the district court that she has presented no valid reason to disturb the award, so we affirm.

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* We have agreed to decide the case without oral argument because the briefs and record adequately present the facts and legal arguments, and oral argument would not significantly aid the court. FED. R. APP. P. 34(a)(2)(C).

Continental Airlines regularly administered "no notice" alcohol tests to its pilots. In 2008, Betts failed one. As a result, she and Continental entered into a "Last Chance Agreement," which required Betts to complete successfully a rehabilitation course and to abstain from drinking for the "remainder of her career" with Continental. The Agreement specified that she would be discharged for cause if she violated these terms. After Betts failed an alcohol test at her treatment facility, Continental fired her.

Betts sought review of the discharge through arbitration before the System Board of Adjustment, as provided in her collective-bargaining agreement. Her case remained pending for several years. Finally, in 2016, the Board issued an award upholding Betts's discharge on the basis that she violated the Last Chance Agreement.

Betts then sued United (which had merged with Continental) under the Railway Labor Act. With the aid of counsel, she argued that the Board exceeded its jurisdiction because the award did not "draw its essence" from the Last Chance Agreement and the award was "based on evidence gained in violation of public policy." The district court entered summary judgment for United, ruling that the Board did not exceed its jurisdiction because its decision was based on its interpretation of the Last Chance Agreement. The court added that no Seventh Circuit case has ruled that "public policy" is a ground for disturbing an arbitral award, and in any case public policy favored upholding the award.

Betts, now pro se, seeks review of the district court's decision. Although her arguments mainly focus on events that occurred after arbitration, we construe her appeal as challenging the award. In reviewing a challenge to an arbitration award under the Railway Labor Act, 45 U.S.C. § 153, we apply "one of the most deferential standards of judicial review in all of federal law." *Bhd. of Locomotive Eng'rs & Trainmen, Gen. Comm. of Adjustment, Cent. Conference v. Union Pac. R.R. Co.*, 719 F.3d 801, 803 (7th Cir. 2013). We will disturb an award only for failure "to comply with the requirements of this [Act], for failure of the order to conform, or confine itself, to matters within the scope of the [Board's] jurisdiction, or for fraud or corruption by a member of the [Board]." 45 U.S.C. § 153 First (q). None of these grounds exists here.

Betts presented no evidence that the Board committed fraud. In her appellate brief, she speculates that, after the Board issued the arbitration award, one of the arbitrators sabotaged her position in a doctoral program in which she was enrolled. This argument goes nowhere. Not only is it forfeited because Betts did not raise it with

the district court, *Wheeler v. Hronopoulos*, 891 F.3d 1072, 1073 (7th Cir. 2018), but it is also unrelated to the arbitral proceedings or the award itself.

Nor did Betts raise any basis for challenging the award on grounds that the Board did not comply with the Act or exceeded its arbitral jurisdiction. In opposing summary judgment, Betts argued only that the Board misconstrued the requirement in the Last Chance Agreement that she abstain from alcohol for "the remainder of her career" at Continental. She observed that the Board applied this requirement to the period when she received rehabilitation treatment, and in her view the requirement applied only while she was working. But as we have said before, the question is not *how* the arbitrator should have interpreted the agreement, but rather *whether* the arbitrator interpreted the agreement. *Bhd. of Locomotive Eng'rs & Trainmen Gen. Comm. of Adjustment, Cent. Region v. Union Pac. R.R. Co.*, 522 F.3d 746, 757 (7th Cir. 2008) (citing *Hill v. Norfolk & W. Ry.*, 814 F.2d 1192, 1195 (7th Cir. 1987)). An alleged misinterpretation is still an interpretation. *Id.* Thus, Betts's argument is insufficient to overturn the arbitral award.

Finally, Betts reprises her contention that the arbitration award violates public policy. As the district court correctly noted, we have never opined whether an arbitral award can be contested on public policy grounds. We need not do so today, either. In her brief, Betts disowns the policy argument that she raised in the district court and advances a new one. She argues that the public policy issue that the district court should have considered "concerned domestic abuse and domestic violence." But, like her contention about fraud, Betts forfeited this argument by not presenting it to the district court. *See Hronopoulos*, 891 F.3d at 1073. In any event, this argument is about events outside of the arbitration forum; therefore, it is not an argument that the arbitrator's award itself violated public policy.

AFFIRMED

United States Court of Appeals

For the Seventh Circuit
Chicago, Illinois 60604

May 30, 2019

Before

MICHAEL S. KANNE, *Circuit Judge*

DAVID F. HAMILTON, *Circuit Judge*

AMY C. BARRETT, *Circuit Judge*

No. 18-3336

KATHLEEN BETTS,
Plaintiff-Appellant,

v.

UNITED AIRLINES, INC.,
Defendant-Appellee.

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division.

No. 17 C 2709

Thomas M. Durkin,
Judge.

ORDER

On consideration of the petition for rehearing filed in the above-entitled cause, all judges on the original panel have voted to deny a rehearing. It is, therefore, ORDERED that the aforesaid petition for rehearing is DENIED.

UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

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ORDER

June 17, 2019

By the Court:

No. 18-3336	KATHLEEN BETTS, Plaintiff - Appellant v. UNITED AIRLINES, INC., Defendant - Appellee
Originating Case Information:	
District Court No: 1:17-cv-02709 Northern District of Illinois, Eastern Division District Judge Thomas M. Durkin	

Upon consideration of the **MOTION TO STAY MANDATE**, filed on June 7, 2019, filed on June 7, 2019, by the pro se appellant,

IT IS ORDERED that the motion is **DENIED**. A stay of the mandate is not necessary to enable the appellant to petition the Supreme Court for a writ of certiorari. Judgment was entered by this court on June 3, 2019, and the appellant has 90 days from the entry of that judgment to file a petition for a writ of certiorari with the Supreme Court. See 28 U.S.C. § 2101(c); Sup. Ct. R. 13.1.

CERTIFICATE OF SERVICE

ON THIS _____ DAY OF AUGUST, 2019, the petitioner in Case No: 18-3336 states the following in accordance with 28 USC 1746:

" I declare under penalty of perjury that the foregoing is true and correct.".

Kim Watterson, Counsel for Defendant United Airlines has been served via first class US Mail at the following address:

Kim Watterson c/o
Reed Smith
355 Grand Avenue
Ste 2900
Los Angeles CA 90071

Executed on:_____

Signature:_____