

Airline Management Newsletter

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Discharge of Pilot Arrested for Drug Possession Did Not Violate ERISA

Executive Summary: The Eighth Circuit Court of Appeals recently upheld a federal trial court's determination that a pilot's ERISA lawsuit based on his termination was not precluded by the Railway Labor Act (RLA) and that the employer did not violate ERISA when it discharged the pilot shortly after he was arrested for possession of marijuana. See *Sturge v. Northwest Airlines, Inc.* (8th Cir. Oct. 7, 2011). The trial court's decision is discussed in our May 2009 *Airline Newsletter*.

Background

In July 2003, a pilot employed by Northwest Airlines was placed on long-term medical leave as a result of injuries he suffered outside of work. On October 8, 2003, he applied for disability retirement benefits available pursuant to the Northwest Airlines Pension Plan for Pilot Employees. A few days after he applied for disability retirement, the pilot was arrested for possession of marijuana. After being informed of the arrest, Northwest began an investigation, during which the pilot admitted to possessing and using marijuana. Subsequently, the airline discharged him. The discharge was grieved and upheld by a system board of adjustment.

Although the pilot had been discharged, Northwest continued to process his application for disability retirement and ultimately approved the application, determining that his "retirement date" was the date he was terminated. However, as a result of his termination for cause, the pilot was not eligible for some of the benefits ordinarily available to pilots on disability retirement, such as accrual of seniority, the right to return to work, or pass privileges. Additionally, because he was terminated before he had attained 15 years of employment with Northwest, he was not eligible for company-paid medical insurance premiums. The pilot also claimed that he received a lower disability retirement pension income because he was terminated before he reached 15 years of employment.

ERISA Claims

The pilot subsequently sued Northwest, claiming he was terminated in retaliation for exercising his rights under an employee benefit plan and in order to interfere with his rights under the plan, in violation of ERISA. The Eighth Circuit upheld the trial court's determination that the pilot's ERISA claims were not preempted by the RLA and that his discharge did not violate ERISA.

No RLA Preemption

The RLA establishes a "mandatory arbitral mechanism for the prompt and orderly settlement of two classes of disputes" between air carriers and their employees: major disputes and minor disputes. "Major disputes" generally involve the negotiation or renegotiation of collective bargaining agreements. Parties to a major dispute are required to pursue a lengthy process of bargaining and mediation. Minor disputes are controversies arising out of the application or interpretation of collective bargaining agreements. Minor disputes must be resolved only through mechanisms required by the RLA, including the carrier's internal dispute-resolution processes and an adjustment board established by the employer and the union. The adjustment board has mandatory, exclusive jurisdiction over minor disputes; thus, state and federal courts lack jurisdiction over claims based on minor disputes. However, the RLA does not deprive courts of jurisdiction over disputes that do not fall into one of these categories.

The court held that the plaintiff's ERISA claims were not precluded by the RLA because, to resolve these claims, the court was not required to determine whether he was entitled to benefits under the pension plan or whether his termination was proper under the CBA. Instead, the court was required to determine whether the plaintiff was terminated in retaliation for claiming ERISA-protected benefits. The court held that that was a purely factual question regarding the employer's conduct and motives.

Additionally, the court held that it was not required to interpret the CBA's provisions regarding fitness for duty and the rules of conduct regarding drug use because, according to the court, Northwest did not dispute that the pilot would have been entitled to the benefits he sought if he had not been terminated for cause.

The court also held that the evaluation of the plaintiff's proposed comparator evidence did not require it to interpret a term of the CBA, but instead required, at most, reference to the CBA.

The Plaintiff's Discharge did not Violate ERISA

The court also held that Northwest did not violate ERISA when it discharged the plaintiff. To prevail under the retaliation prong of the statute, the plaintiff was required to show a causal connection between his termination and his application for ERISA-protected benefits. To prevail under the interference prong, the plaintiff was required to show a causal connection between the termination and the likelihood, at the time he was fired, that he would receive disability retirement benefits in the future.

In support of his claims of interference and retaliation, the plaintiff relied on the testimony before the system adjustment board of the person who discharged him. That individual testified that the plaintiff was not eligible for Northwest's Pilot Assistance Program because that program only applies if the pilot is a "pre-duty violator." The plaintiff, he testified, was not a pre-duty violator because, among other reasons, "he was on a long-term sick leave with no ... possibility of assignment to any kind of flight duty in the near future." The court held that this testimony did not support a reasonable inference that this individual had an unlawful motive for the termination. The court held that the evidence, when considered in the light most favorable to the plaintiff, showed only that management considered the plaintiff's long-term medical leave to determine whether he was eligible for the Pilot Assistance Program and did not support a finding of impermissible motive in the termination decision.

The court also held the plaintiff's allegations regarding Northwest's conduct in processing his application for disability retirement did not support his retaliation or interference claims because the alleged conduct occurred ten months after his termination and there was no evidence connecting the discharge to the processing of the plaintiff's application for disability retirement.