BEFORE THE
DEPARTMENT OF TRANSPORTATION
OFFICE OF THE SECRETARY
WASHINGTON, DC

Application of

BOSTON-MAINE AIRWAYS CORP. Docket OST-00-7668

for issuance of an amended certificate of
public convenience and necessity pursuant
49 U.S.C. § 41102 (Interstate Large-Aircraft
Operations).

RESPONSE OF AIR LINE PILOTS ASSOCIATION TO
SUPPLEMENT NO. 14 TO APPLICATION OF BOSTON-
MAINE AIRWAYS CORP. AND ACCOMPANYING LETTER

Communications with respect to this document should be sent to:

JERRY D. ANKER
RUSSELL BAILEY
Air Line Pilots Association
1625 Massachusetts Avenue, NW
Washington, DC  20036
Phone: 202-797-4086 or 4087
Facsimile: 202-797-4014

Attorneys for
Air Line Pilots Association

Dated: May 3, 2005
ON May 2, 2005, Boston-Maine Airways Corp. (BMAC) filed Supplement No. 14 to its Application in this docket, in which it not only submitted certain additional fitness information but also renewed its requests for (1) “immediate” issuance of an exemption to permit operation of one additional B-727-200 aircraft and (2) “expedited” issuance of a Certificate of Public Convenience and Necessity authorizing the performance of both interstate and foreign air transportation utilizing “up to seven (7) large aircraft.” (Supp. No. 14 at 4-5). This filing was accompanied by a letter in which BMAC argues that the Department’s “prolonged delays of action on BMAC’s appropriate and well-
documented applications for wholly routine authority have become intolerable and unconscionable."

ALPA’s position on BMAC’s pending applications is a matter of record and need not be repeated here. We merely wish to stress that there is nothing “routine” about BMAC’s pending applications in this and related dockets, because the behavior of BMAC’s principals over a long period of time and in a number of contexts raises very serious questions as to their fitness to operate any airline. As we have previously stated, we do not oppose expeditious action on BMAC’s applications, so long as those applications are denied, not granted.

To further support our position, we wish to bring to the Department’s attention the latest example of the contemptuous attitude toward legal requirements and commitments that BMAC’s principals have exhibited so frequently. We have previously referred to the case of three pilots who were discharged unlawfully by BMAC’s sister carrier, Pan American Airways Corp., in retaliation for their refusal to fly because they were fatigued from an unusually long and stressful day and feared that continuing to fly would endanger themselves and Pan Am’s passengers. (See Motion of ALPA to Revoke Certificate for Lack of Fitness, filed December 29, 2004 at 7 and Attachment G.) At the time ALPA’s Motion to Revoke was filed, an OSHA investigation had determined that these discharges were unlawful under the AIR-21 statute, and Pan Am had agreed to pay these pilots their back pay, but had failed to do
so. In its Answer to ALPA’s motion, filed January 7, 2005, BMAC feigned lack of knowledge concerning the back pay issue, stating: “ALPA’s allegation regarding the failure to comply with same (sic) back pay will be reviewed and, if necessary, promptly remedied.” (BMAC Answer to ALPA Motion to Revoke at 11 (emphasis added)). However, no remedial action was forthcoming from Pan Am, so ALPA and the affected pilots filed a lawsuit to enforce the settlement. ALPA v. Pan American Airways Corp., D.N.H. No. C-05-18-M. Pan Am then agreed once again to pay the back pay it owed these pilots, and a written stipulation to this effect was signed by the parties and filed with the court on February 23, 2005. (Attachment A hereto). As set forth in the stipulation, the payments were to be made in two installments, half on March 30 and half on April 30, 2005.

Yet once again, despite Pan Am’s solemn, written promise to make these payments, not one cent has been paid. Moreover, Pan Am has now refused to say when these promised payments would be made, or even if they would ever be made. The pilots have therefore moved to hold Pan Am in contempt for its flagrant breach of the written promise it made both to ALPA and the Court. (Attachment B hereto).

BMAC has used the terms “intolerable” and “unconscionable” to characterize the Department’s failure to grant the authority it seeks. We respectfully suggest that these terms apply far more appropriately to the actions of Pan Am — which was owned and operated by the same people who now own and operate BMAC — in first firing pilots
who were unwilling to fly while fatigued and then repeatedly reneging on its promises to make these pilots whole. In our view, people who engage in this kind of intolerable and unconscionable behavior are not fit to hold authority to operate an airline.

For these and all the other reasons stated in ALPA’s previous submissions, we urge the Department to deny all of BMAC’s pending applications for new authority, and to revoke its existing certificate for lack of fitness.

Respectfully submitted,

JERRY D. ANKER
RUSSELL BAILEY
Air Line Pilots Association
1625 Massachusetts Avenue, NW
Washington, DC  20036
Phone: 202-797-4086 or 4087
Facsimile: 202-797-4014

Attorneys for
Air Line Pilots Association
CERTIFICATE OF SERVICE

I, Janice A. Reed, hereby certify that on this 3rd day of May, 2005 a true and correct copy of the foregoing Response of Air Line Pilots Association To Supplement No. 14 to Application of Boston-Maine Airways Corp. and Accompanying Letter was served as follows:

VIA OVERNIGHT MAIL:

Mr. Anthony Liquori, Manager
Flight Standards District Office 5
Federal Aviation Administration
21 Al McKay Avenue
Portland, ME 04102
Phone: 207-780-3263

VIA OVERNIGHT MAIL:

John R. Nadolny
Senior V.P. and General Counsel
Boston-Maine Airways Corp.
14 Aviation Avenue
Portsmouth, NH 03801
Phone: 603-766-2002

VIA OVERNIGHT MAIL:

Christopher Poreda
Office of the Regional Counsel
New England Region
Federal Aviation Administration
12 New England Executive Park
Burlington, MA 01803-5299
Phone: 781-238-7042

VIA HAND DELIVERY:

Nathaniel P. Breed, Jr.
Zuckert, Scoult & Rasenberger
888 - 17th Street NW, Suite 700
Washington, DC 20006-3309

Janice A. Reed
UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW HAMPSHIRE

Airline Pilots Association International,
Jari Hayrynen,
Joachim Schatton, and
Donald Morse

Plaintiffs,

v.

Pan American Airways Corp.

Defendant.

Civil Action No. 1:05-cv-18
JURY TRIAL REQUESTED

STIPULATION OF PARTIAL DISMISSAL PURSUANT TO FRCP 41(a)(1)

Pan American Airways Corp. ("Pan Am") and plaintiffs Jari Hayrynen, Joachim
Schatton and Donald Morse (collectively "Plaintiffs") stipulate as follows:

1. All claims by Plaintiffs against Pan Am in the above captioned matter
shall be dismissed “without prejudice” on account of the following agreement of the
parties:

Pan Am shall make the following payments to the individual Plaintiffs on the
following schedule:

<table>
<thead>
<tr>
<th></th>
<th>March 30, 2005</th>
<th>April 30, 2005</th>
</tr>
</thead>
<tbody>
<tr>
<td>Hayrynen</td>
<td>$34,085.84</td>
<td>$34,121.63</td>
</tr>
<tr>
<td>Schatton</td>
<td>$13,481.71</td>
<td>$13,495.87</td>
</tr>
<tr>
<td>Morse</td>
<td>$ 6,740.86</td>
<td>$ 6,747.93</td>
</tr>
</tbody>
</table>

2. The Court retains jurisdiction to enforce the above agreement if necessary.

3. The parties shall notify the court when the agreed-to payments have been
completed. Upon such notice, this dismissal shall be “with prejudice.”
4. This Stipulation does not serve to extinguish ALPA’s claims on behalf of members Steele and Franklin.

WHEREFORE, Pan Am respectfully requests that the Honorable Court:

A. Dismiss the Plaintiffs claims against Pan Am as described herein; and

B. Grant such other relief as may be just.

Respectfully submitted,

PAN AMERICAN AIRWAYS CORP.

By Its Attorneys,
RANSMEIER & SPELLMAN
PROFESSIONAL CORPORATION

Dated: February, 23 2005

By: /s/ R. Matthew Cairns
R. Matthew Cairns (NHBA # 411)
One Capitol Street,
P.O. Box 600
Concord, NH 03302-0600
Tel. (603) 228-0477
matt@ranspell.com

JARI HAYRYNEN, JOACHIM
SCHATTON AND DONALD MORSE

By Their Attorneys,
RATH YOUNG & PIGNATELLI,
Professional Association

Dated: February 23, 2005

By: /s/ Andrew W. Serell
Andrew W. Serell, Esquire (#2298)
One Capital Plaza
P.O. Box 1500
Concord, NH 03302-1500
Tel. 603-226-2600
aws@rathlaw.com
Dated: February, 23 2005

By: /s/ Julie Glass

Marcus Migliore Esquire
Julie Glass, Esquire
John E. Wells, Esquire
1625 Massachusetts Ave. NW
Washington, DC 20036
Tel. 202-964-4084 (Glass)
glassj@alpa.org
UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW HAMPSHIRE  

AIR LINE PILOTS ASSOCIATION, 
INTERNATIONAL, JARI HAYRYNEN 
JOACHIM SCHATTON, and DONALD 
MORSE,  

Plaintiff,  

v.  

PAN AMERICAN AIRWAYS CORP.,  

Defendant.  

Docket No. C-05-18-M  

MOTION OF JARI HAYRYNEN, JOACHIM SCHATTON 
AND DONALD MORSE FOR ORDER TO SHOW CAUSE 
WHY DEFENDANT PAN AMERICAN AIRWAYS CORP. 
SHOULD NOT BE HELD IN CONTEMPT OF COURT  

NOW COME Plaintiffs Jari Hayrynien, Joachim Schatton and Donald Morse 
(collectively, “Plaintiffs”), by and through their attorneys, and move that this Court issue an 
order to show cause why Defendant Pan American Airways Corp. (“Pan Am”) should not be 
held in contempt of this Court for failure to make required settlement payments. 

IN FURTHERANCE, Plaintiffs state as follows: 

1. This action was commenced by Complaint dated January 13, 2005. In this action, 
Plaintiffs sought enforcement of an underlying settlement resolving an action they brought 
against Pan Am under the Wendell H. Ford Aviation Investment and Reform Act for the 21st 

2. By Stipulation filed with this Court dated February 23, 2005, the claims brought 
in this action by Plaintiffs were resolved as follows: 

Pan Am shall make the following payments to the individual Plaintiffs on the 
following schedule:
<table>
<thead>
<tr>
<th>March 30, 2005</th>
<th>April 30, 2005</th>
</tr>
</thead>
<tbody>
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</table>

3. The terms set forth in the Stipulation marked the second time that the parties had “settled” the claims of these three Plaintiffs. Specifically, as alleged in the Complaint filed in this matter, Plaintiffs had reached an underlying settlement with Pan Am on their AIR-21 claims (the terms of which are subject to a Confidentiality Agreement) before a hearing held with the Department of Labor (“DOL”) on September 23, 2003. An order approving the underlying settlement was thereafter entered by Stuart A. Levin, Chief Administrative Law Judge for the DOL in Boston. (See Exhibit 8 to Complaint, Order approving Settlement Agreement, dated December 1, 2003.) That underlying settlement agreement then became binding, with the full effect of a final administrative order, in accordance with 29 C.F.R. § 1979.111(e). Pan Am’s failure to comply with the terms of that underlying settlement agreement resulted in the filing of this action.

4. As set forth above, the Stipulation filed in this matter required Pan Am to make settlement payments to the aforementioned three Plaintiffs in two installments: on March 30, 2005 and April 30, 2005.

5. Pan Am has, to date, made none of the payments referenced in the parties’ Stipulation. On the afternoon of April 29, 2005, Plaintiffs’ counsel contacted counsel for Pan Am to inquire as to the status of the payments. Counsel for Pan Am informed Plaintiffs’ counsel for the first time that the required payments would not be made on or before April 30, 2005; and that
counsel for Pan Am could not commit to a date by which the required payments would be made – or even whether the required payments would ever be made.

6. As of the date of the filing of this Motion, May 2, 2005, Pan Am has neither made the payments required by the Stipulation nor provided Plaintiffs with any assurance as to if and when said payments may be forthcoming.

7. The February 23, 2005 Stipulation filed with this Court specifically provided that this Court would retain jurisdiction to enforce its terms, if such enforcement proved necessary. (See Stipulation dated February 23, 2005, ¶ 2)

8. The parties’ Stipulation was specifically referenced in the parties’ Joint Motion for Stay of Proceedings dated March 2, 2005, which provided as follows: “By Stipulation dated February 23, 2005, the parties have resolved the claims brought in this action by Plaintiffs Hayrynen, Schatton and Morse under the AIR-21 proceeding.” The parties’ Joint Motion for Stay of Proceedings requested a stay for 90 days for the parties to attempt to resolve separate claims brought by ALPA under the Railway Labor Act.

9. The parties’ Joint Motion for Stay of Proceedings was granted by this Court by Order dated March 4, 2005. However, in light of Pan Am’s failure and refusal to make payments in accordance with the February 23, 2005 Stipulation, this Court should enter an order requiring Pan Am to show cause why it should not be held in contempt of this Court.

10. No Memorandum of Law is filed as the basis for the relief sought is fully set forth in the within Motion.

11. Undersigned counsel certifies that he has made a good faith effort to obtain concurrence in the relief sought herein and that Pan Am does not consent to said relief.
WHEREFORE, Plaintiffs request that this Court:

A. Enter an Order requiring Pan Am to show cause why it should not be held in contempt of this Court for failure to make the settlement payments required pursuant to the Stipulation of February 23, 2005;

B. After Pan Am’s response to said Order, issue an order requiring that said settlement payments be made a by date certain, with interest, and imposing appropriate sanctions.

C. Award Plaintiffs’ counsel its costs and attorneys’ fees in the filing and litigation of this Motion; and,

D. Grant such further relief as may be just and proper.

Dated: May 2, 2005

Respectfully submitted,

Jari Hayrynen, Joachim Schatton and Donald Morse

By Their Attorneys,

RATH, YOUNG AND PIGNATELLI,
Professional Association

By: /s/ Andrew W. Serell (#2298)
Andrew W. Serell, Esquire
One Capital Plaza, POB 1500
Concord, N.H. 03302-1500
aws@rathlaw.com
CERTIFICATE OF SERVICE

I hereby certify that the foregoing document was filed with the Court through the ECF system on the 2nd day of May, 2005, and service will be made electronically by the Court’s system to R. Matthew Cairns, Esquire.

/s/ Andrew W. Serell
Andrew W. Serell (#2298)