

Airline Hit With \$600,000 Gender Bias Verdict

by Michael Dayton, Editor

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A jury in the U.S. Western District has awarded \$600,000 to two female airline dispatchers for gender discrimination, finding they were wrongfully fired after booking free flights for two male pilots and discussing personnel matters with them on the phone.

The dispatchers, both long-time employees with good work records, set up the flights — at the pilots' request — because the pilots wanted to attend a union meeting in Arizona. During taped phone conversations, the pilots and dispatchers both aired complaints about management.

Company officials cited those incidents in discharging the dispatchers. However, the pilots were allowed to keep their jobs and were not reprimanded.

Jurors on Nov. 27 concluded CCAir, Inc., which operates out of Charlotte as US Airways Express, was liable for gender discrimination under Title VII and owed each plaintiff \$300,000. The amount of back pay, lost benefits and attorneys' fees has yet to be decided.

"We had two very long-term employees, one for 10 years, one for 17 years," said Charlotte attorney Julie H. Fosbinder. She represented the plaintiffs with Charlotte lawyer Martha C. Odom. "Those were career positions for them and the undisputed evidence was that up to the point of termination they were extremely good employees, praised by their supervisors with no negative comments.

"The company went to great lengths at trial to say what the dispatchers did was worse than what the pilots did," Fosbinder said. "But the jury concluded the behavior was the same."

Said Odom, "The pilots were subject to the same work rules, and the same policy and procedures manual as the dispatchers, but didn't get even as much as a letter in their files."

The case of *Crowley v. CCAir, Inc.* (U.S. Western District — Charlotte Division, Docket No. 3:00CV647-H) went to trial Nov. 18 after Chief U.S. Magistrate Judge Carl Horn III denied the employer's summary judgment motion in a June order (North Carolina Lawyers Weekly No. 2-04-1668, 20 pages).

Fosbinder said the verdict showed that gender discrimination claims can be won — if they get past the summary judgment stage.

"If you get to the jury with good facts, they'll find discrimination," she said. "Where there is not direct evidence of the discrimination, it will be based on disparate treatment, and the jury has no trouble seeing that. What I believe struck jurors here was that the company didn't even give the pilots a reprimand or warning."

Facts

Judge Horn's summary judgment order set out this factual and procedural background.

The defendant, CCAir, Inc., is a commercial airline that provides service as US Airways Express. Its principal office is in Mecklenburg County.

The two plaintiffs, Carol Crowley and Peggy Danette Staton, had worked for CCAir as dispatchers — Crowley for six years, Staton for 13 years.

Like pilots, dispatchers are licensed by the Federal Aviation Administration and must pass the same written test. Under FAA and CCAir's manual, dispatchers had operational control of flights and shared responsibility with pilots to make sure the planes were operated safely and economically:

* The pilot and dispatcher had to agree the plane could be operated safely before commercial

passengers were transported.

- * Once a flight was under way, the dispatcher was responsible for monitoring the flight until completion.
- * The dispatcher shared joint responsibility for any operation decisions made during flight.
- * The dispatcher was responsible for flight delays and cancellations and for plane substitutions to maintain schedules.

That joint authority put the dispatchers on equal footing with the pilots, according to Fosbinder.

"In essence, there was no good way to distinguish the conduct between the pilots and the dispatchers," Fosbinder said.

The plaintiffs in their depositions said their work environment was generally sexually hostile, with inappropriate pictures and drawings sometimes circulated on office computers or posted on the department bulletin board. A supervisor made inappropriate remarks to one plaintiff during a promotion interview, according to the opinion.

"There was a fair amount of evidence that the company had tolerated a workplace that was demeaning to women," Fosbinder said. "The zero tolerance policy on the bulletin board had been overwritten with comments that mocked it."

The company was also something of a "man's world," according to Fosbinder.

"There were eight females pilots out of 217," she said. "It was a male-dominated workplace, and under the president, Tim Coon, all top management positions became male."

The events surrounding the firings unfolded in early September 1999 when a pilot, Jim Williams, called the dispatch office and asked for time off for himself and Ken Auton, another pilot. The reason: they wanted to attend a pilot union meeting in Phoenix, Ariz.

Auton contacted Crowley and asked for a "positive space" booking for himself and Williams. Under that nonrevenue travel pass, the holder is entitled to a seat under most circumstances, although if the flight is oversold, the positive space holder may be bumped.

According to a tape recording of the conversation, while Crowley and Auton waited for the reservations to be made, the two discussed the upcoming union meeting. Crowley expressed concern that pilots and dispatchers would be asked to take pay cuts and said she would quit her job before doing that. Auton referred to several representations made by CCAir's management as "horseshit."

Crowley reserved positive space seats for the pilots on a flight with 41 empty seats that departed Charlotte on Sept. 13, 1999.

On the evening of Sept. 13, Auton, who was in Phoenix, called the dispatch office twice and talked to Staton. Staton testified she reserved the positive space seats for the pilots on a Sept. 16, 1999 flight which had 24 empty seats. Staton booked the seats as "crew must ride," which ensured the pilots would not be bumped, even on an oversold flight.

During their conversation, which was also taped, Staton and Auton discussed the approach of Hurricane Floyd and what planes were being rerouted. They also talked about a vacant management position and some seat assignments.

In response to Auton's questions about a vacant management position, Staton mentioned that "one dispatcher was not being considered because of his 'drug thing' which had been 'kind of hid' from the FAA," according to the summary judgment order.

In mid-September, another CCAir employee was reviewing flight reservations and saw the Phoenix bookings for Auton and Williams. Those were brought to the attention of Pete Sistare, vice president of the company's flight operations department. He determined the pilots did not have authorization to fly positive space and asked for an investigation.

The company's manager also issued a memo stating the dispatchers were not permitted to book

pilots on positive space seats for union meetings, unless they were specifically authorized by management.

On Sept. 15, Staton heard Mark Parker, the acting chief dispatcher, ask another dispatcher about the Phoenix bookings. Staton volunteered information about the bookings and asked if that caused a problem.

According to the summary judgment order from Judge Horn, "In the light most favorable to the plaintiffs, when Mr. Parker replied that Mr. Humphries [director of operations] and Mr. Sistare were 'making a big deal of it' and showed her the memorandum, Ms. Staton offered to cancel the pilots' Sept. 16, 1999 reservations, but Mr. Parker told her not to 'worry about it' and that he would have booked the positive space if the pilots had called him."

Said Odom, "We presented evidence that both women checked with management about the bookings — and offered to undo the return, but the company said it wasn't a problem."

However, the company said it learned of the positive space bookings on its own by looking at a code unique to each dispatcher.

Management officials listened to the taped conversations and met with Crowley on Sept. 21. They told her booking positive space for pilots was a serious offense and could jeopardize the company's pass privileges on US Airways. The managers had a similar conversation with Staton.

The company president later met individually with Staton and Crowley. He said they violated company policy by booking positive space for the pilots. He also took each to task for the unprofessional attitudes they displayed in the taped conversations, saying that was a more serious matter than the bookings and put them at risk of termination.

According to Judge Horn's summary judgment order, several present and former managers testified that dispatchers were generally authorized to book pilots for positive space.

In late September, company officials decided to fire both plaintiffs as a disciplinary measure. However, the company did not take any disciplinary action against the two pilots, although one manager recommended that Auton be fired.

CCAir offered several reasons for not firing the pilots:

- * The pilots only requested positive space, but the dispatchers made the final decision to book it.
- * The dispatchers were on duty when the reservations were made, while Auton was off duty.
- * The company did not want to jeopardize relations with the pilot's union.

In December 2000, the plaintiffs sued in U.S. District Court for wrongful termination based on gender, in violation of Title VII. They sought monetary damages, including back pay, and equitable relief.

The case went to trial last month. Jurors deliberated less than three hours before finding the corporation liable for gender discrimination.

"We put on evidence that the company had always allowed dispatchers to make positive space bookings," Fosbinder said. "But even if it was a violation, the pilots engaged in the same behavior. They booked the flights, and they were the ones who traveled positive space. And they bad-mouthed management and used profanity in doing so."

Questions or comments may be directed to mdayton@nc.lawyersweekly.com.

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