

STATE OF INDIANA            )  
  ) SS.            IN THE MARION COUNTY SUPERIOR COURT  
COUNTY OF MARION        )

INTERNATIONAL BROTHERHOOD OF        )  
TEAMSTERS LOCAL 357 and            )  
ELIJAH BURGESS,                    )  
  )  
          Plaintiffs,                    )  
  )  
          vs.                            )  
  )  
REPUBLIC AIRWAYS, INC.            )  
  )  
          Defendant.                    )

**VERIFIED COMPLAINT FOR DECLARATORY JUDGMENT, TEMPORARY  
AND PERMANENT INJUNCTIVE RELIEF**

NOW COME the Plaintiffs, the INTERNATIONAL BROTHERHOOD OF  
TEAMSTERS LOCAL 357 and ELIJAH BURGESS, by and through their attorneys, and  
complain of the Defendant, REPUBLIC AIRWAYS, INC. as follows:

**INTRODUCTION**

1. This is an action for injunctive relief, declaratory judgment and other appropriate relief to arrest the illegitimate enforcement of certain employment restrictions included in purported “bonus agreements” imposed by Defendant, REPUBLIC AIRWAYS, INC. (hereinafter the “Company”) upon members of the Plaintiff, the INTERNATIONAL BROTHERHOOD OF TEAMSTERS LOCAL 357 (hereinafter the “Union”) and ELIJAH BURGESS. The state law remedies contract restrictions that the Company seeks to enforce contain unlawful terms against the individual members that are void as a matter of law.

## **PARTIES**

2. Plaintiff INTERNATIONAL BROTHERHOOD OF TEAMSTERS LOCAL 357 is an unincorporated labor organization and affiliated local union of the International Brotherhood of Teamsters (hereinafter the “IBT”) duly chartered and designated by the IBT to act as its agent for purposes of day-to-day contract administration and representation of the Company pilots with its principal place of business 1320 City Center Drive, Suite 160, Carmel, Marion County, Indiana. The non-management pilots of the Company are members of the Union (hereinafter the “Pilots”) which has the capacity to sue and be sued in its own name. The Union represents the Pilots in all matters concerning their employment.
3. Plaintiff ELIJAH BURGESS is a former Pilot for Defendant who was terminated by Defendant. On his first day at the Company, BURGESS was presented with a document which was a contract containing numerous terms and conditions. ELIJAH BURGESS is a resident of the city of New York in the county and state of New York.
4. Defendant REPUBLIC AIRWAYS, INC. is an Indiana Corporation with its principal place of business located at 8909 Purdue Road, Suite 300, Indianapolis in Marion County Indiana. The Company is an “air carrier” subject to the Federal Aviation Act of 1958, as amended, 49 U.S.C. §§ 40101 *et seq.* The Company is also a “carrier” as that term is defined in Sections 201 and 202 of the Railway Labor Act (“RLA”), 45 U.S.C. §§ 181, 182.

## **FACTS**

5. The IBT is an unincorporated labor organization with its headquarters at 25 Louisiana Avenue, N.W., Washington, D.C. Through its Airline Division, the IBT is the certified

bargaining representative of the approximately 2,000 Pilots employed by the Company pursuant to certifications issued by the National Mediation Board in Case No. R-6199 on July 30, 1993 and Case No. R-7284 on June 28, 2011.

6. Pursuant to the RLA, the Union is the exclusive bargaining representative for Pilots hired by the Company. The Company does not dispute that IBT is the exclusive representative of its Pilots concerning terms and conditions of employment.
7. The Company is a “regional” airline providing air service to “mainline” airlines American Airlines, Delta Air Lines and United Air Lines, as part of those mainline airlines’ overall route network. The Company is a subcontractor of the mainline airlines to fly their passengers in aircraft the Company operates and maintains on routes assigned by the mainline airlines. The Company does not maintain any routes of its own nor does it sell airline tickets to passengers. It solely operates flight schedules to and from destinations assigned by its mainline airline customers.
8. The Company employs approximately 1,950 Pilots who operate the airline’s flights.
9. As the certified representative of the Company’s Pilots, the Union has entered into collective bargaining agreements in 1994, 1998, 2003, 2015, 2018 and 2022 with the Company, which established the rates of pay, rules and working conditions applicable to the Company’s Pilots.
10. The most recent collective bargaining agreement (hereinafter the “CBA”) between the Company and the Union was executed in October 2022.
11. The pathway to becoming a commercial airline pilot requires a pilot to accumulate a certain minimum number of hours before being eligible to obtain the pathway certificates

ultimately to secure an Airline Transport Pilot (hereinafter “ATP”) certificate with the appropriate ratings and endorsements.

12. The costs associated with the instruction and schooling required to accumulate the certificates, endorsements, ratings and hours of experience are significant. One nationwide flying school fixes the costs for a pilot with no experience to be at \$108,995. See <https://atpflightschool.com/become-a-pilot/flight-training/pilot-training-cost.html#:~:text=How%20Much%20Does%20it%20Cost,pilot%20with%20flight%20instructor%20certificates>
13. The Company itself has established a flight training academy with its own web site advertising that the time needed to obtain the requisite requirements ranges wildly from 12-18 months to 24-30 months. See <https://flywithlift.com/flight-training-programs/>
14. By the time the Company hires a pilot, he or she has already invested a significant amount of time and money in their education. For example, the Federal Aviation Administration (hereinafter the “FAA”) requirement to earn a private rating is 40 flight hours. However, in practice, it typically takes closer to 60 flight hours. Flight hours are only recorded when the aircraft is in actual flight operations. That is, when it first moves under its own power when the intention is to attain flight and then ends when the aircraft comes to a rest after landing. Thus, in order to accrue 60 hours of actual flight time in an aircraft, the pilot devotes nearly twice that time in travel to the airport, preparation for the flight, preparation of the aircraft for flight and post-flight duties. It is not unfair to say that for every hour of flight accrued, a pilot has devoted a total of 1.5-2 hours of additional time.

15. As pilots accrue flying time and meet minimum flight time requirements, they can then apply for additional certificates and ratings. The typical pathway is for a pilot to earn their private pilot certificate, followed by their instrument, commercial, certified flight instructor, multi-engine and complex endorsements, certificates, and ratings. The final certificate required to pilot an airliner is called an ATP rating which further requires training and exams in the specific aircraft the pilot wishes to fly. With the exception of pilots who attend a dedicated flight university or flew in the U.S. armed services, the FAA requires 1,500 hours of flight time in order to qualify for the ATP among other requirements.
16. In addition to the ATP, it is mandatory that the pilot obtain a type rating to fly a specific aircraft whenever either the Maximum Takeoff Weight of the aircraft exceeds 12,500 pounds or any aircraft powered by turbojets.
17. These ratings require the pilot to undergo written, oral and practical exams. Before a pilot can apply for an ATP certificate, they must also complete an Airline Transport Pilot Certification Training Program. For the ATP rating, because it is specific to each aircraft, students undergo training in a full motion simulator followed by what is known as a check ride where they perform maneuvers and procedures under the observation of an FAA examiner or designee to achieve both an ATP certificate and the specific aircraft type rating.
18. Training at Republic is comprised of: (1) several weeks of classroom instruction concerning rules, regulations and the standard operating procedures of the Company; (2) classroom procedures training with a cockpit mockup and; (3) full motion simulator training to learn to fly the plane.

19. Every pilot, regardless of background, must undergo indoctrination training when they start with a new carrier. This is true regardless of whether the pilot starts with or without a type rating. In other words, if a pilot undergoes training at the Company, completes that training, resigns and takes the same position at another airline, they would have to undergo indoctrination training again at their new employer.
20. Failures on check rides are recorded and pilots typically must disclose these training failures in an interview and on applications.
21. Airline pilots are strictly regulated. Pilots must submit to frequent medical exams and meet certain criteria established by the FAA. In order to be employed as an airline pilot, the pilot must have a pilot's certificate issued by the FAA and must have a valid medical certificate. An Airline Transport Pilot must submit to a medical exam by an FAA designated medical examiner once every six months for a captain and no less than once per year for a First Officer.
22. All pilots are required to report to the FAA any prescription and non-prescription medications they are taking at the time of their medical exam as well as any medical treatment received in the preceding three years.
23. The failure to meet the medical criteria can result in the revocation or suspension of the medical certificate which results in the immediate loss of flight privileges and payment of salary.
24. The FAA requires that a pilot disclose to the FAA any form of treatment for mental health issues including counseling and therapy. Disclosure of such treatment may result in the suspension of the pilot's medical certificate pending an investigation by the FAA. These reviews of a pilot's medical condition can take months or even years for the FAA

- to address through specialized medical requirements to be satisfied by the pilot, during which time the pilot remains unemployable.
25. In addition to the foregoing, the FAA maintains a record database previously known as PRIA (Pilots Records Improvement Act of 1996). This database has been superseded by the Pilot Records Database (hereinafter the “PRD”).
  26. The PRD requires that carriers evaluate certain information concerning a pilot/applicant's training, experience, qualification, and safety background, before allowing that individual to begin service as a pilot with their company.
  27. The PRD contains information about the pilot including any enforcement actions, accident history, previous employers and, most significantly, any record of corrective or disciplinary action in response to an event pertaining to job performance and a separation record by an air carrier. See [https://www.faa.gov/sites/faa.gov/files/Disc\\_Actions\\_NDR.pdf](https://www.faa.gov/sites/faa.gov/files/Disc_Actions_NDR.pdf)
  28. As airlines are required to review the PRD before hiring, any negative information concerning a pilot’s employment history *is always seen* by any potential employer.
  29. When a pilot is hired at their first airline, they start as a First Officer (hereinafter “FO”). In that position, they are mentored by the captain who is a more senior pilot with more experience. This mentoring scheme enhances safety because piloting an aircraft is a skill that is a constant learning process.
  30. An FO accrues what is known as Second in Command (hereinafter “SIC”) time which is different from Pilot In Command. For purposes of safety and at the insistence of the Union, previous iterations of the CBA required an FO to log 1,000 hours of SIC time, and accrue 2,500 hours total time before being allowed to upgrade to Captain.

31. Currently, an FO is required to accrue 1,000 hours of SIC time, however a total time of 2,500 hours is no longer required.
32. The Company demanded that this greater experience requirement be removed in the 2022 CBA.
33. As a practical matter, pilots apply to regional airlines because they do not have sufficient hours to apply to what is commonly referred to as a “major” or “mainline” carrier such as United, Delta, American, Alaska, Spirit, Jet Blue or Southwest for example.

#### **The Company’s “Career Advancement Program”**

34. Due to the well-publicized pilot shortage, the Company began experiencing severe difficulty recruiting and retaining Pilots.
35. In response, the Company began offering signing bonuses to new hire Pilots and requiring each pilot candidate to sign a contract called the “Republic Airways New First Officer Career Advancement Pathway Program Agreement.” (Attached as Exhibit A-1). The agreement was drafted unilaterally by the Company. This was followed by an amended version of the same agreement titled “Republic Airways Career Advancement Program Pre-Hire Enrollment Agreement.” (Attached as Exhibit A-2). Hereinafter collectively referred to as the “New Hire Contracts.”
36. The New Hire Contracts contained numerous oppressive and unlawful terms including:
  - a. Requiring the pilot to work for the Company for a minimum of five years (5) or at least two (2) years as a Captain.
  - b. Liquidated damages payable to the Company in the amount of \$100,000 not supported by any actual cost of the Company or otherwise having a calculable basis.



- c. Repayment/forfeiture to the Company of any bonus, including bonus payments already earned by the Pilots, within only seven days from the date of demand.
- d. Restrictive covenants barring the Pilot from working for any airline that is in competition with the Company for one year.
- e. Fixing the forum for any disputes in Marion County Indiana or the United States District Court for the Southern District of Indiana regardless of the domicile of the Pilot.
- f. A choice of law of Indiana regardless of the domicile of any Pilot.
- g. Waiving any objection to venue.
- h. A fee shifting provision granting only the Company its fees and costs.

(See Exhibit A-1).

- 37. The Company did not engage in any meaningful negotiations whatsoever with pilots concerning these agreements, but presented the agreements to the pilots for signature at the peril of immediate termination if the pilot did not sign as presented.
- 38. The Company has since revised the agreement several times with one of the latest iterations still maintaining the same terms but:
  - a. Exempting the Company's controlling shareholders, United, Delta and American from the list of "competing airlines."
  - b. Waiving demand present, dishonor, protest and other common law contractual defenses.
  - c. Labeling the Pilot as an "at-will" employee in contradiction to the CBA.
  - d. Changing the title of the Agreement to New Hire First Officer Signing & Incentive Bonus Agreement and Promissory Note.

(See Exhibit A-2).

39. The exclusion of United, Delta and American is illusory because all three maintain a controlling ownership interest in Republic Holdings.
40. Consequently, the non-compete restrictive covenants are overly broad as they include any U.S air carrier (except for United, Delta and American), regardless of whether that air carrier is actually a competitor of the Company, and have an overly broad time limitation.
41. The Company has routinely enforced these types of agreements against Pilots after they have terminated their employment and, in one month alone in August of 2023, sent out 78 collection letters to former Pilots. (Enforcement letters attached as Exhibit B)
42. Pilots have complained of inaccurate demand amounts, unreasonable demands and further collection efforts even after they were told their debt was paid in full.
43. The Company has also deducted amounts allegedly owed under the individual agreements from paychecks and accrued vacation in violation of the CBA.
44. In some cases, the Company's actions are borderline vindictive.

### **Elijah Burgess**

45. ELIJAH BURGESS was born and raised in East Tennessee not far from Knoxville. Growing up, his family did not have much money and had barely enough to scrape by.
46. Elijah did not want a desk job despite having previously decided on a computer science career. In researching different jobs, he discovered aviation and began watching YouTube videos made by influencers in commercial and general aviation. Because of his family's circumstances, Elijah's first time on a commercial flight was at the age of 18.

47. Elijah applied for several aviation specialty colleges and enrolled in Embry-Riddle Daytona's aeronautical science program. He left his parents' house shortly after turning 18.
48. Again, because his family was unable to assist him financially, Elijah paid for college by working full time, applying for scholarships and supplementing it with student loans. Elijah worked full time at Chipotle as a service manager and then as a full time claims administrator for Bank of America and finally as a ground instructor while attending college full time.
49. Prior to taking any flight lesson, Elijah observed several flights in the back seat and, in his words, "It was awesome." Elijah felt like he had found what he was meant to do.
50. Elijah obtained his private pilot certificate and then progressed up to Certified Flight Instructor (CFI) which he obtained during the height of COVID. Because nobody was hiring, Elijah started teaching flying independently and began accumulating students. He loved teaching and ultimately formed his own flight school.
51. Elijah's education expenses toward earning his private pilot certificate, instrument rating, commercial certificate and multi-engine rating and his four-year aviation degree cost \$165,923.89 excluding living costs.
52. Elijah's business grew and he decided to pursue his dream of flying a larger aircraft – a passenger carrier.
53. Elijah applied at several regional airlines and received offers from the Company and SkyWest. The Company contacted Elijah for a position as a FO with the first contact being a phone interview. Nothing about any contract was mentioned.

54. The Company then flew Elijah to Indianapolis for a tour. After the tour, interviews were conducted with a representative from Human Resources (“HR”), Brook Hamilton, and a Pilot. At the end of the interview, Elijah asked about the rumors he heard about a new hire contract. To which Hamilton stated, “We are not hiring first officers. We are hiring for the Career Advancement Program.” She continued, “You may have seen a copy of the contract online, but the Company has revised it to make it more favorable to the pilots.”
55. Hamilton went on to state that Elijah would have to remain with the Company for three years, but Elijah would receive \$100,000. Hamilton did not mention anything about liquidated damages, clawbacks or restrictive covenants. Hamilton downplayed the contract and seemed to indicate that it was a non-event.
56. Hamilton then stated that the Company was inclined to offer Elijah a position subject to him completing his ATP certificate. Hamilton did not mention at all that the Company can terminate the Pilot for any reason or that the Company could pursue the Pilot for any damages. Elijah signed the contract.
57. At the time of the interview, Elijah was wearing diamond stud earrings. Neither Hamilton nor the Pilot present for the interview said anything about a dress code restriction as to earrings.
58. Elijah completed his training for the ATP certificate without any mention concerning his earrings.
59. Elijah started his training at the Company on June 26, 2023. Training is comprised of: (1) several weeks of classroom instruction concerning rules, regulations and the standard operating procedures of the Company; (2) classroom procedures training with a cockpit mockup; and (3) full motion simulator training to learn to fly the plane.

60. Not one of the instructors or management speakers in the classroom training (including the representative from HR) commented on the earrings.
61. In addition, the Pilot Style Guide allows for relaxation of the uniform requirements while in training.
62. After completing the classroom training, Elijah was in a briefing room with an instructor and his simulator training partner.
63. Notwithstanding the relaxed requirements while in training, an unidentified individual pulled Elijah from the room and took him to a darkened classroom where he pointed at Elijah's ears and stated, "we are trying to keep a professional standard here."
64. Elijah offered to remove the earrings after class, but the unidentified individual demanded they be removed immediately. Elijah complied.
65. Elijah earned his type rating on September 12, 2023. Elijah's first day of flying as a commercial airline pilot with passengers was on September 18, 2023.
66. In the course of the following five months, Elijah observed that the Pilot Style Guide was never enforced. One of the requirements in the Pilot Style Guide is that female pilots with hair longer than or equal to shoulder length be pulled back, secured and worn in a "conservative style." However, the Company does not enforce the requirement and routinely posts photos on its social media presence of its female pilots with their hair down despite it being in violation of the Pilot Style Guide.
67. On information and belief, none of the numerous female pilots in uniform that the Company flaunts on its social media accounts were ever disciplined. In fact, just days before this complaint was filed, the Company posted a picture of a female captain who is also a Base Chief Pilot violating the Pilot Style Guide.

68. Additionally, Elijah observed captains wearing cowboy boots, female captains with exposed tattoos on their arms, pilots wearing multi-colored socks, and female pilots who did not wear their hair secured.
69. The Pilot Style Guide forbids all of the above. One of the requirements in the Pilot Style Guide is that female pilots with shoulder length hair pull the hair up in a “conservative style.” However, the Company routinely posts photos on its social media presence of its female pilots with their hair down despite it being forbidden.
70. The Company also has different standards for its male flight attendants, permitting them to wear earrings while working in their customer-facing role, as to the same dress code violation for which Elijah was fired.
71. On February 6, 2024, Elijah was contacted by the Company and told that he would finish that day’s flying and then be flown back to his home base the following day with the remainder of his assigned trip terminated early.
72. The following day, on February 7, 2024, Elijah was summoned to a disciplinary hearing where he learned that the previously unidentified person was Base Chief Pilot Anthony Lombardo.
73. Lombardo questioned Elijah at the disciplinary hearing and repeatedly asked if Elijah remembered him referred to the style guide. Elijah said he did not remember to which Lombardo accused him of lying.
74. Following the disciplinary hearing, Lombardo called Elijah and told him he had until the end of the day to resign or he would be terminated. Elijah reiterated that he did not know who Lombardo was at the time to which Lombardo stated, “Let me offer you some

advice, never disregard the importance of anyone you talk to at any company you work for.”

75. Elijah asked about whether he would be liable under the New Hire Contract to which Lombardo said he would check with HR. Elijah never heard back from Lombardo or HR.
76. Later, Elijah received the termination notice with the pretextual reason as disobedience and lying. The letter referenced three complaining witnesses as the genesis for the Company action.
77. The Union requested that these persons be identified. The Company refused and, to date, has refused to provide the identity of the three people whom the Company alleged complained about his conduct.
78. The alleged disobedience was the refusal to obey the unlawful order to remove the earrings.
79. The alleged lying was Elijah stating he did not recall Lombardo mentioning the Pilot Style Guide.
80. The Union immediately lodged a protest over the termination, asserting that the termination was discriminatory and was selective enforcement.
81. The Union also filed a grievance over the termination which the Company denied asserting that an unlawful order must be obeyed and pointed out that because Elijah was a probationary employee, he had no right to arbitration or relief.
82. Within days of the termination, the Company dispatched a process server to Elijah at his home in New York and served a letter demanding repayment of money allegedly advanced for Elijah’s type certificate (\$4,877.14), his hotel lodging (\$712.00), airfare (\$268.14), bonus payment (\$23,087.50) and liquidated damages (\$100,000) within seven

- (7) days totaling \$127,964.64[sic]. (Demand letter attached as Exhibit C). The Company also reiterated that Elijah would be liable for all collection costs including attorney's fees.
83. In addition, the Company threatened enforcement of the noncompete restriction against Elijah which bars him from working for any U.S. commercial passenger airline other than Delta, United and American Airlines. The vast majority of these air carriers are not competitors of the Company.
  84. The Company's enforcement of its contract against Elijah is career ending.
  85. The Company blocked Elijah from pursuing his chosen career by placing the termination on his PRD and has threatened enforcement of the restrictive covenants.
  86. The enforcement of a restrictive covenant that excepts Delta, United and American is a distinction without difference since none of those carriers would hire a pilot terminated from one of its regional carriers and the Company knows this.
  87. Moreover, the non-compete is nearly global since Elijah is not licensed to fly in any other country without obtaining new certification or permission in a foreign country. He would also have to obtain a visa to work in a foreign country. The noncompete is therefore unlimited in scope and prevents Elijah from securing gainful employment in his chosen profession.
  88. Such a restrictive covenant would have equal effect on any Pilot if it were to be enforced even if Delta, United and American are exempt.
  89. As if preventing Elijah from pursuing his chosen profession was not enough, the Company seeks to financially ruin Elijah by enforcing a "liquidated damages" clause.
  90. The liquidated damages clause lacks any justification. The liquidated damages clause is purely punitive.



91. In addition, the Company's demand for a return of the funds it advanced as an "incentive" is not prorated despite Elijah having worked as a Pilot for six months. The Company is demanding he forfeit earned bonus amounts.
92. Consequently, the demand is a windfall for the Company and is not liquidated damages, but income to the Company.
93. The Company demanded payment within seven business days and reserved its right to enforce every remedy against Elijah.

### **The Upgrade Contracts**

94. In addition to problems recruiting new Pilots, the Company also suffered from a shortage of Captains primarily as a result of a significant erosion in the quality of life for Captains. This shortage has caused extended working hours/days for pilots, inability for Captains to modify work schedules as past practice has allowed, and an increased use of on call standby (reserve) Captains which leads to more uncertainties in their schedules.
95. Additionally, the Company began offering bonuses to First Officers who upgraded to Captain.
96. The so-called upgrade bonuses (hereinafter the "Upgrade Contracts") were offered in varying amounts. (Exhibits D and E).
97. However, the Company is not treating the bonuses as rewards for the upgrade. Rather, it styles the payments as loans with the requirement to sign agreements and promissory notes.
98. Much like the New Hire Contracts, the Upgrade Contracts had all the indicia of an individual contract including and unlawful terms:
  - a. Entered into in violation of the Union's exclusive right to representation.

- b. Entered into with the individual member Pilot who lacked legal capacity.
  - c. Demands claw back of the entire bonus payment without proration if any milestone is not met thereby imposing a forfeiture of earned bonus payments.
  - d. Requiring repayment of the forfeited bonus payments within seven days of the date of demand, which period is unsupported by any legitimate Company interest and is only intended to restrict the employee's freedom to pursue other employment.
  - e. Authorizes unilateral deductions from the Pilot's paycheck in violation of the CBA.
  - f. Waiving demand present, dishonor, protest and other common law contractual defenses.
  - g. Holds all heirs and legatees liable for repayment of the bonus structure.
  - h. Fixing the forum for any disputes in Marion County Indiana or the United States District Court for the Southern District of Indiana regardless of the domicile of the Pilot.
  - i. A choice of law of Indiana regardless of the domicile of the Pilot.
  - j. Waiving any objection to venue.
  - k. A fee shifting provision granting only the Company its fees and costs.
99. A significant difference between the New Hire Contracts and the Upgrade Contracts is that the individual Pilot is already a full member of the Union and the Union's right of representation is beyond doubt.
100. Neither the Company nor the individual Pilot have standing or capacity to enter into any contract that concerns work rules or conditions.

101. The Upgrade Contracts are slightly different because they were entered into after the Pilot had already been with the Company for some time and completed the initial training as well as accumulating the required hours.
102. Consequently, the Upgrade Contracts were entered into with Pilots despite the exclusive authority to negotiate on behalf of the Pilots.
103. The Company never negotiated with the Union concerning the Upgrade Contracts.
104. The Upgrade Contracts are not bonuses at all as evidenced by the title on the document which states “Captain Upgrade Bonus Agreement and Promissory Note.” (Exhibits D and E).
105. The amounts of the “bonus” vary from time to time; however, the boilerplate contractual language and the claw backs remain.
106. Specifically, the Company retained the right to enforce recoupment and other remedies in state court.
107. However, when individual Pilots seek any relief pertaining to incentive bonuses under the agreements, the Company demands the pilots file a grievance under the CBA and submit the grievance to binding arbitration rather than being able to enforce the agreement in the forum identified in the agreement.
108. For example, Pilot #2 entered the upgrade class in November of 2023.
109. The Company offered all members of the November 2023 upgrade class a \$100,000 bonus with \$50,000 paid after completion of training and another \$50,000 six months later.

110. The Upgrade Contracts specify that if the Pilot resigns before the expiration of twelve (12) months, the Pilot must repay the entire \$100,000, thereby forfeiting earned bonus payments.
111. The fact that agreement requires forfeiture of earned bonus payments makes the claw back a punitive clause and therefore, unlawful.
112. In the case of Pilot #2, the Company denied him the bonus claiming him to be ineligible.
113. Pilot #2 filed a grievance with the Union which the Company denied claiming, inter alia, the grievance was untimely as beyond 45 days after Pilot #2 knew or should have known of the facts giving rise to the grievance.
114. The Union is now forced to expend Union funds and resources to pursue the Company in arbitration while the Company seeks relief against Pilots in state court under the illegitimate agreements.

## **CAUSES OF ACTION**

### **COUNT I** **Declaratory Judgment** **(New Hire Contracts)**

115. Plaintiff re-incorporates and realleges paragraphs 1-114 as though fully set forth herein as and for this Count.
116. The Company's enforcement of the New Hire Contracts is unlawful due to the numerous and oppressive terms including:
  - a. Requiring repayment of any advances irrespective of the time of service.
  - b. Requiring payment of liquidated damages in the amount of \$100,000 which is an entirely fabricated amount.

- c. Imposing a non-compete on Pilots that essentially prohibits them from gainful employment.
- 117. Each of these terms, individually and collectively, prevent the Pilots from pursuing their chosen profession.
- 118. In addition, as enforced by the Company, they cause emotional duress on Pilots attempting to further their careers.
- 119. The Company can make no showing that the Pilots are utilizing any secret or trade information by pursuing their profession after leaving the Company.
- 120. Pilots who are terminated and go to a competing carrier must undergo training at another carrier.
- 121. The training that the Company provides is not transferrable or fungible between airlines as each airline has different operating and internal procedures.
- 122. The Company is not in competition with the airlines that employ pilots leaving their employment.
- 123. Pilots who leave the Company's employ do not engage in competition with the Company.
- 124. The Company does not provide Pilots with training that is transferable to other airlines.
- 125. The Company does not provide Pilots with proprietary trade secrets that may be transferred to other airlines.
- 126. Pilots who leave the Company do not use knowledge gained during their employment with the Company to then compete with the Company.
- 127. No other airline gains an unfair advantage against the Company by employing pilots who formerly worked for the Company.
- 128. The Company does not lose any income when an individual Pilot leaves its employment.

129. The Company does not incur extraordinary costs associated with an individual Pilot leaving its employment.
130. The one-year restriction against a pilot's employment by any airline other than an airline partner of the Company is unsupported by any legitimate business interest of the Company and is intended solely to restrict the free market in pilot labor for the affected pilots.
131. By terminating an employee, the Company has deemed that employee to be of insufficient value and of no threat upon which to require a non-compete.
132. The claw back of the incentive payments renders the agreements without consideration.
133. Repayment and imposition of any terms under the Contract after termination by the Company is also unlawful. *See Schwartz v. Gary Community School Corp.*, 762 N.E. 2d 192, 201(Ind. Ct. App. 2002).
134. Any payment to an employee vests when the employee renders those services. *Highhouse v. Midwest Orthopedic Institute, P.C.*, 807 N.E.2d 737, 739 (2004).
135. When the Pilots subjected to the New Hire Contracts reported for work and at each stage of payment of incentive bonuses, those bonuses were immediately vested upon payment.
136. The provisions collectively are penalties used to secure performance of the contract and are not payment in lieu of performance.
137. The liquidated damages clause claimed by the Company is solely used to punish the Pilots for leaving the Company.
138. Since the agreement imposes a forfeiture by the Pilot of the only consideration provided by the Company in support of the agreement, the liquidated damages provision and noncompete restriction are void for lack of consideration.

139. Consequently, any contracts seeking repayment of advances, liquidated damages, or enforcement of a non-compete are void as against public policy.

WHEREFORE, the Union prays for judgment in its favor and for the following relief:

- a. That the Court find, hold and declare that the aforementioned provisions are void and unenforceable.
- b. That the Court find, hold and declare that the Pilots subjected to the New Hire Contracts lacked capacity to enter into any contract affecting the employee's terms and conditions of employment without the benefit of Union representation by the Pilot's exclusive representative.
- c. That the Court enter a temporary restraining order, preliminary injunction and permanent injunction against Defendant from further pursuing any further enforcement of the New Hire Contracts.
- d. That the Court enter a temporary restraining order, preliminary injunction and permanent injunction against Defendant from entering into any further New Hire Contracts pending the outcome of this litigation.
- e. That the Court order disgorgement of any amounts repaid to the Company by any Pilot.
- f. Any other relief the Court deems fit and proper.

## **COUNT II**

### **Declaratory Judgment (Upgrade Contracts)**

140. Plaintiff re-incorporates and realleges paragraphs 1-114 as though fully set forth herein as and for this Count.

141. Individual Pilots lack the legal capacity to make his or her own agreement with the Company concerning work, wages, compensation and benefits without the benefit of Union representation by the Pilot's exclusive representative.
142. Since the agreement imposes a forfeiture by the Pilot of the only consideration provided by the Company in support of the agreement, the agreements are void for lack of consideration.
143. The inclusion of claw backs and other state law benefits to the Company such as venue, state law remedies, survivorship, attorney's fees and costs in the individual agreements are void.
144. The Upgrade Contracts containing provisions availing themselves of state law remedies are void and in conflict with the RLA.
145. Any bonuses paid vested immediately and are not subject to any repayment.

WHEREFORE, the Union prays for judgment in its favor and for the following relief:

- a. That the Court find, hold and declare that the aforementioned provisions contained in the Upgrade Contracts are void and unenforceable.
- b. That the Court find, hold and declare that the Pilots lacked capacity to enter into any contract without the benefit of representation by the Pilot's exclusive Union representative.
- c. That the Court enter a temporary restraining order, preliminary injunction and permanent injunction against Defendant from further pursuing any further enforcement of the Upgrade Contracts.



- d. That the Court enter a temporary restraining order, preliminary injunction and permanent injunction against Defendant from entering into any further Upgrade Contracts pending the outcome of this litigation.
- e. That the Court order disgorgement of any amounts repaid to the Company by any Pilot under the Upgrade Contracts.
- f. Any other relief the Court deems fit and proper.

I AFFIRM UNDER THE PAINS AND PENALTIES OF PERJURY THAT THE FOREGOING IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE AND BELIEF.

As to allegations within the knowledge of Local 357:

International Brotherhood of Teamsters, Local 357

Date: \_\_\_\_\_

  
Anthony G. Campo (Mar 19, 2024 15:22 EDT)  
\_\_\_\_\_  
Anthony Campo, President

As to allegations pertaining to Elijah Burgess:

Date: \_\_\_\_\_

\_\_\_\_\_  
Elijah Burgess

I AFFIRM UNDER THE PAINS AND PENALTIES OF PERJURY THAT THE FOREGOING IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE AND BELIEF.

As to allegations within the knowledge of Local 357:


International Brotherhood of Teamsters, Local 357

Date: \_\_\_\_\_

\_\_\_\_\_  
Anthony Campo, President

As to allegations pertaining to Elijah Burgess:

Date: 3/19/2024

  
\_\_\_\_\_  
Elijah Burgess

Respectfully submitted,  
**MACEY SWANSON, LLP**

/s/Jeffrey Macey

Jeffrey A. Macey, Atty No. 28378-49

*The International Brotherhood of Teamsters  
Local 357 and Elijah Burgess*

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Respectfully submitted,

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*Pending Temporary Admission*

*The International Brotherhood of Teamsters  
Local 357 and Elijah Burgess*