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January 15, 2024

VIA EMAIL AND U.S. MAIL

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14 E. Gay Street
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Re: Unlawful Use of Self-Help

Dear Counsel:

Over the last several weeks, NetJets Aviation Inc. (“NetJets”) has observed a number of changes in pilot behavior that reflect an obvious effort to engage in concerted action, in direct violation of the employees’ status quo obligations under the Railway Labor Act (“RLA”), 45 U.S.C. § 151 *et seq.* I am writing to notify your client, NetJets Association of Shared Aircraft Pilots (“NJASAP”), that NetJets expects the union to immediately comply with its own independent statutory obligation to prevent its members from continuing to disrupt NetJets’ operations.

As you are aware, the primary “purpose of Congress in passing the Railway Labor Act was ‘to provide a machinery to prevent strikes’” “in order to safeguard the vital interests of the country” in uninterrupted rail [and now also air] service. *Texas & N.O.R.R. v. Brotherhood of Ry. Clerks*, 281 U.S. 548, 565 (1930); *see also* § 2(1) of the RLA, 45 U.S.C. § 151a(1). To that end, until parties initiate and then fully exhaust the “major dispute” bargaining procedures of the RLA, both sides are required to maintain the “status quo.” *Detroit & T. Shore Line R.R. v. United Transp. Union*, 396 U.S. 142, 149 (1969). This means that both prior to and during the Act’s “virtually endless” collective bargaining procedures, it is unlawful for either side to use economic force to pressure the other side to engage in bargaining, accept a proposal on the bargaining table, or retaliate for rejecting the other side’s proposals. More specifically, the status quo obligations of the Act prohibit use of self-help during the period when the parties are barred from serving a new Section 6 notice by a moratorium clause in a pending agreement. *See, e.g., S. Pac. Transp. Co. v. Bhd. of Ry., Airline & S.S. Clerks, Freight Handlers, Exp. & Station Emps.*, 1975 WL 1246, at *9 (N.D. Cal. Dec. 18, 1975). A moratorium clause prohibits the parties from even initiating the major dispute procedures, and so any use of self-help to try to force changes in agreement terms during a moratorium period is, by definition, an attempt to circumvent the entire bargaining process and so is therefore unlawful.

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The obligation to refrain from self-help during the status quo period applies not just to strikes, but also other conduct that has the effect of disrupting carrier operations. As the courts have said, “[t]here is no question that the RLA’s status quo requirement” prohibits conduct that “has the consequences of a strike.” *Air Line Pilots Ass’n, Int’l v. United Air Lines*, 802 F.2d 886, 906 (7th Cir. 1986); *see also, e.g. Amtrak v. Transp. Workers Union of Am.*, 373 F.3d 121, 126 (D.C. Cir. 2004) (same). In particular, the RLA’s status quo obligation prevents “[t]he concerted refusal of overtime, slow[]downs, . . . and other harassments by [the union and its members].” *United*, 802 F.2d at 906; *see also, e.g., United Air Lines, Inc. v. Air Line Pilots Ass’n, Int’l*, 563 F.3d 257 (7th Cir. 2009) (enjoining violations of the status quo including (1) refusal of junior/senior manning assignments; (2) refusal to waive contract provisions; (3) “fly the contract” to increase flight delays, cancellations and costs; and (4) increased use of sick leave); *Long Island R.R. v. System Fed. No. 156*, 368 F.2d 50 (2d Cir. 1966) (slowdown); *Delta Air Lines v. Air Line Pilots Ass’n, Int’l*, 238 F.3d 1300, 1307-08 (11th Cir. 2001) (concerted refusals to fly overtime or to volunteer for unscheduled open time); *US Airways v. U.S. Airline Pilots Ass’n*, 813 F. Supp. 2d 710, 731 (W.D.N.C. 2011) (increases in pilot fatigue calls); *Atlas Air Inc. v. International Brotherhood of Teamsters*, 280 F. Supp. 3d 59 (D.D.C. 2017), *aff’d*, 928 F.3d 1102 (D.C. Cir. 2019) (refusals to volunteer for “open flying time”); *Texas International Airlines Inc. v. ALPA*, 518 F. Supp. 203, 215 (S.D. Tex. 1981) (increased write-ups of maintenance problems)

Whenever unionized employees violate the status quo, their union representative has its own statutory obligation to take action to stop the violation, even if the union did not instigate the illegal conduct. The RLA requires both carriers and unions to “exert every reasonable effort” to make and maintain agreements and to prevent disruptions to interstate commerce. 45 U.S.C. § 152 First. Courts have interpreted this to mean that when employees engage in self-help, unions have an affirmative obligation to “do everything possible to ‘maintain’ the CBA so that commerce is not in any way interrupted.” *Delta Air Lines v. ALPA*, 238 F.3d 1300 (11th Cir. 2001); *United Air Lines v. IAM*, 243 F.3d 349 (7th Cir. 2001).

In this case, NetJets has seen a change in pilot behavior since about July 15, 2023. The conduct has worsened in recent months, and has been especially bad since the bargaining ended in November. Detailed data regarding the pilots’ change in behavior is provided in the attachment, addressing three specific forms of conduct:

1. There has been a dramatic increase in the pilot-sourced break rate, which is a measurement of how often pilots are submitting write-ups that ground aircraft. Pilot-sourced breaks have increased from an average of 36.8 per day in early 2023 to an average of 50.5 per day in recent weeks. This increase is statistically significant, meaning that it cannot be explained as just random variation. *See Attachment A at 2 - 4.*

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2. Fatigue rates have also spiked. From October of 2022 (when the company adopted its current fatigue mitigation policy) to July 14, 2023, the fatigue calls averaged about 12.8 per day. Since September 1, the per-day average has been 23.0 per day, which is again, a statistically significant increase. Fatigue calls have been unusually high since September 1 despite the fact that average duty times have decreased over the same period. *See Attachment A at 5 - 8.*

3. The rate at which pilots accept extended duty days has declined. There has been a marked decline in the offer acceptance rate every month since July 2023. *See Attachment A at 9.*

In combination, these various changes in pilot behavior have had a material adverse impact on NetJets' operations. Flight delays are up, especially in the last two months. *See Attachment A at 10 - 11.* These delays cause irreparable damage to NetJets' brand and service reputation. NetJets has also suffered decreased aircraft availability and increased operational expenses.

The pilots' behavior in this regard has been none-too-subtly encouraged in a series of NJASAP communications to its members. NetJets is aware of as many as a dozen messages that suggest – using the typical union code words for self-help – that pilots should take action to reflect their unhappiness with the state of voluntary negotiations. Beginning in early July, several messages focused on “fatigue,” couched in terms of “reminding” pilots of their right to call in fatigued and urging pilots to call the Steward on Duty for “assistance.” A series of related messages from NJASAP around this same time highlighted maintenance write-ups, again encouraging pilots to “address maintenance issues” and darkly hinting at “disturbing reports” about maintenance “trends” at NetJets. These communications have continued throughout the fall and early winter. Indeed, just a few days ago, NJASAP sent out another message urging crews to “document a discrepancy(s) when and where it occurs,” and to “[p]rotect yourself and your license” by refusing to fly “until you are certain your aircraft is safe and airworthy.” Everyone involved – the company, the union, and the pilots – understands that these communications are promoting self-help.

Under these circumstances, NJASAP's obligations under § 2 First require at least three specific steps. *First*, there must be immediate and direct intervention by union leadership – at all levels – to stop the pilots from engaging in the kinds of concerted action described above. NJASAP is obligated to enforce those instructions through the imposition of fines or other union discipline. *Second*, the union has an obligation to explain to the company what, in particular, NJASAP is doing to enforce the agreement. *Third*, NJASAP must provide a formal written assurance to NetJets that the union and its members will, going forward, fully comply with their obligations under the RLA. More specifically, NetJets asks that NJASAP confirm in writing that no further self-help will be tolerated by the union prior to full exhaustion of the major dispute procedures of the RLA.

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Please confirm within five days that NJASAP will undertake these steps, as well as any other reasonable efforts necessary to bring the current illegal conduct to an end. If NJASAP refuses to do so – and/or if NetJets does not see a substantial improvement in all of the metrics referenced above within fourteen days – the carrier will take appropriate action, including seeking available remedies in federal court.

If you have any questions or would like to discuss this matter, please let me know.

Very truly yours,

/s/ Don Munro
Don Munro

Cc: Jennifer Beale, Esq.