

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

DANIEL FANDREI,)	
)	
Plaintiff,)	No.
)	
v.)	Judge
)	
UNITED AIRLINES, INC.,)	JURY TRIAL DEMANDED
)	
Defendant.)	

COMPLAINT

Plaintiff, Daniel Fandrei (“Fandrei”), by Zachary T. Fardon, United States Attorney for the Northern District of Illinois, for his civil action against Defendant United Airlines, Inc., alleges as follows:

1. This civil action is brought pursuant to the Uniformed Services Employment and Reemployment Rights Act of 1994, 38 U.S.C. § 4301, *et seq.* (“USERRA”).

Jurisdiction and Venue

2. This court has jurisdiction over the subject matter of this action pursuant to 38 U.S.C. § 4323(b).

3. Venue is proper in this district under 38 U.S.C. § 4323(c)(2) and 28 U.S.C. § 1391(b)(2). Defendant United Airlines, Inc. maintains places of business in this district, and a substantial part of the events giving rise to the claims in this action occurred in this district.

Parties

4. Daniel Fandrei resides in Fairfield, California.

5. United Airlines, Inc. is an airline company headquartered in Chicago, Illinois. In October 2010, United Airlines, Inc. (“United”) and Continental Airlines, Inc. (“Continental”)

underwent a corporate merger, whereby United Continental Holdings, Inc. became the parent company to both subsidiaries. On March 31, 2013, United and Continental merged into a single legal entity, which was subsequently renamed United Airlines, Inc.

Factual Allegations

6. Fandrei was commissioned as an officer with the United States Air Force on May 30, 1990, and is trained as a KC-10 pilot. On December 21, 2001, Fandrei joined the United States Air Force Reserve. Fandrei held the rank of Lieutenant Colonel. He retired from the United States Air Force Reserve as of January 1, 2016.

7. In January 2000, Fandrei was hired as a pilot with United where he worked until furloughed on September 16, 2009. In October 2010, while Fandrei was still furloughed, United and Continental underwent a corporate merger, whereby United Continental Holdings, Inc. became the parent company of both subsidiaries.

8. On June 12, 2012, Fandrei was recalled from furlough and placed as a pilot under the Continental subsidiary.

9. About six months later, on December 19, 2012, Fandrei was mobilized for four months with the United States Air Force. In advance of his tour of duty, Fandrei gave Continental notice of his upcoming deployment.

10. During Fandrei's period of active service, he was mobilized as a KC-10 pilot at an Air Force base in Southwest Asia.

11. Fandrei was on military leave from Continental from December 19, 2012 through March 13, 2013, and returned to his position at Continental on March 14, 2013.

12. One of the benefits made available to Fandrei as a Continental employee was the accrual of sick leave.

13. During the relevant timeframe, the collective bargaining agreement between Continental and the Airline Pilots Association provided for five hours of sick leave to accrue per month.

14. Continental did not allow its pilots to accrue sick leave during periods of military deployment. Sick leave was accrued, however, if an employee worked at any point during the month; thus, Fandrei was credited with five hours of sick leave for the months of December 2012 and March 2013 because he worked some days, both before and after his deployment, those months. He did not, however, accrue any sick leave during January and February 2013.

15. Due to this benefits policy, Fandrei was not credited ten hours of sick leave for the two full months he was deployed.

16. In contrast, by its express terms, the collective bargaining agreement in effect during Fandrei's four-month deployment allowed pilots to accrue sick leave (and vacation), during association leaves of absence (ALAs), vacations, and sick leave. A pilot might be on ALA for many purposes, including: taking a position with the Airline Pilots Association (ALPA), taking a full-time elected or appointed position with the ALPA Master Executive Council, taking an executive position with any agency or branch of the federal government directly connected with aviation, or attending to ALPA business, subject to operating needs.

17. By its express terms, the collective bargaining agreement in effect during Fandrei's four-month mobilization stated that ALA leave was not to exceed a period of eight consecutive years.

18. After returning to work, Fandrei contacted Continental because he was not credited with ten hours of sick leave during the two full months of his deployment. Continental

notified him that its pilots were not permitted to accrue sick leave during military deployment, despite affording this benefit to employees on association leaves of absence.

19. Prior to January 1, 2014, all United pilots on military leave were allowed to accrue sick leave during their deployment.

20. On January 24, 2014, Fandrei filed a complaint with the Veterans' Employment and Training Service alleging that Continental had violated USERRA by failing to credit him with sick leave benefits while on military leave.

21. The Department of Labor's Solicitor's office contacted Continental's parent company United Continental Holdings, Inc., on or about August 20, 2014, informing it that Fandrei's allegations were meritorious, and the matter was referred to the Department of Justice at the request of Fandrei.

Claim for Relief

22. USERRA provides that a person who takes leave from his or her employment in order to serve in the uniformed services is entitled to all non-seniority benefits that are generally provided to employees with similar seniority who are on non-military leave. 38 U.S.C. § 4316(b)(1). USERRA's implementing regulation further provides that "[i]f the non-seniority benefits to which employees on furlough or leave of absence are entitled vary according to the type of leave, the employee must be given the most favorable treatment accorded to any comparable form of leave when he or she performs service in the uniformed services." 20 C.F.R. § 1002.150(b).

23. USERRA also provides that no contract may detract from the rights afforded by the statute. 38 U.S.C. § 4302(b).

24. Defendant violated USERRA by calculating Fandrei's sick leave accrual in a manner that discriminated against employees on military leave.

25. Specifically, defendant violated USERRA by failing to credit Fandrei with ten hours of sick leave for the two full months of his deployment, despite granting this benefit to employees on comparable leave.

Prayer for Relief

WHEREFORE, Fandrei prays that this court grant the following relief:

A. Declare that defendant's failure or refusal to provide equal sick leave benefits for employees on military service was unlawful and in violation of USERRA;

B. Order defendant to comply fully with the provisions of USERRA by requiring defendant to credit Fandrei with the sick leave he would have accrued under the terms of the most favorable comparable leave;

C. Award Fandrei costs and prejudgment interest on the amount of lost sick leave found due;

D. Enjoin defendant from taking any action in violation of USERRA; and

E. Grant Fandrei such additional relief as may be just and proper, together with his costs in this action.

Respectfully submitted,

ZACHARY T. FARDON
United States Attorney

By: s/ Courtney R. Baron
COURTNEY R. BARON
Assistant United States Attorney
219 South Dearborn Street
Chicago, Illinois 60604
(312) 353-1996
courtney.baron@usdoj.gov