

#77367

CLERK US DISTRICT COURT
NORTHERN DIST. OF TX
FILED

ORIGINAL

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

2014 OCT -9 PM 1:16
DEPUTY CLERK NT

LOCAL 541, TRANSPORT WORKERS UNION
OF AMERICA, AFL-CIO and TRANSPORT
WORKERS UNION OF AMERICA, AFL-CIO,

Plaintiffs,

vs.

JAMES FUDGE, EARL SMITH, RICK
CAMPBELL, NATE PIKE, MARCO AMAYA,
KEN YORK and MARK STEPHENS,

Defendants.

Civil Action No.

3-14CV3639-L

PLAINTIFFS' ORIGINAL COMPLAINT

1. This is an action brought by a local union and a national union against former local union officers for monetary relief under the Labor Management Reporting and Disclosure Act ("LMRDA") and Texas common law. This action seeks to recover the amount of union assets that the former local union officers misspent for improper purposes in breach of their fiduciary duties to the union.

JURISDICTION AND VENUE

2. This Court has jurisdiction over this matter pursuant to Section 501 of the LMRDA (29 U.S.C. § 501), 28 U.S.C. § 1331 and 28 U.S.C. § 1337. This court has supplemental jurisdiction over Plaintiffs' state law claim under 28 U.S.C. § 1367.

3. Venue is appropriate in this district pursuant to 28 U.S.C. § 1391 because the violations alleged herein took place in this district.

PARTIES

Plaintiffs

4. Local 541, Transport Workers Union of America, AFL-CIO (“Local 541” or the “Local”) is a “labor organization” within the meaning of Sections 3(i) and (j)(4) of the LMRDA, 29 U.S.C. §§ 402(i) and (j)(4). As collective bargaining representative, the Transport Workers Union of America, AFL-CIO (“TWU” or the “International”) has delegated to Local 541 certain responsibility for representation of various classes and crafts (bargaining units under the Railway Labor Act) of American Airlines and American Eagle (now Envoy Air) employees. In particular, Local 541 has certain responsibility for representation of approximately 256 American Airlines flight simulator technicians and engineers (“simulator engineers”) and pilot instructors, as well as eight American Eagle pilot instructors, operating out of Dallas/Fort Worth International Airport. At all relevant times herein, Local 541 was governed by the Constitution of TWU, and is a subordinate chartered local of TWU.

5. TWU is a “labor organization” within the meaning of Sections 3(i) and (j)(1) of the LMRDA, 29 U.S.C. §§ 402(i) and (j)(1). TWU is a national union of transit, airline, rail, gaming and other workers, with 114 locals and over 200,000 members and retirees in 22 states. TWU is the collective bargaining representative for, among others, simulator engineers and pilot instructors who work for American Airlines and American Eagle, including those operating out of Dallas/Fort Worth International Airport as members of TWU Local 541.

6. As a result of the actions alleged below, the TWU International Administrative Committee (“IAC”) voted unanimously on July 25, 2014 to adopt a resolution to place Local 541 under trusteeship protection on an emergency basis and appoint Gary Shults (“Shults”) as Administrator for Local 541. On October 1, 2014, after reviewing a report and recommendation of a hearing panel, the TWU International Executive Council (“IEC”), the

supreme authority of TWU (except during an International convention), voted unanimously to continue the trusteeship.

Defendants

7. James Fudge (“Fudge”), now resigned, served as the President of Local 541 and a member of Local 541’s Executive Board (the “Local Executive Board”) at all relevant times herein. Fudge served as an officer of Local 541 within the meaning of Section 3(n) of the LMRDA, 29 U.S.C. § 402(n). By virtue of his position, Fudge owed a fiduciary duty to Local 541 and TWU at all relevant times herein.

8. Defendants Earl Smith, Rick Campbell, Nate Pike, Marco Amaya, Ken York and Mark Stephens were members of the Local Executive Board at all relevant times herein, and were officers of Local 541 within the meaning of Section 3(n) of the LMRDA, 29 U.S.C. § 402(n). By virtue of their positions, Smith, Campbell, Pike, Amaya, York and Stephens owed a fiduciary duty to Local 541 and TWU at all relevant times herein.

FACTUAL BACKGROUND

Issuance of Cashier’s Checks

9. At its June 2014 meeting, the Local Executive Board approved providing \$500 to each simulator engineer and pilot instructor within Local 541 (the “Expenditure”).

10. Pursuant to this Local Executive Board action, Local 541 provided cashier’s checks in the amount of \$500 (the “Checks”) to simulator engineers and pilot instructors employed by American Airlines within Local 541.

11. Local 541 did not provide Checks to pilot instructors employed by American Eagle within Local 541.

12. The Local Executive Board members also received Checks.

13. The Expenditure cost Local 541 more than \$127,000.

14. The Expenditure reduced the balance in the Local's treasury by over 40 percent in a single month.

15. Four Checks were not distributed and were thus re-deposited into the Local 541 treasury prior to the trusteeship being imposed.

16. No portion of the Expenditure distributed to Local members has been returned to Local 541.

17. The minutes of the June 2014 Local Executive Board meeting stated that the \$500 payments were to purchase computers to enhance communication with the Local members at American Airlines, related to seniority integration in the American Airlines-US Airways merger.

18. Prior to the Expenditure, Local 541 was able to communicate adequately with its members. There was and is no basis for concluding that the Local was unable to communicate appropriately with members or that the purchase of a computer would somehow markedly enhance communications.

19. At the time of the Expenditure, Local 541 had the need to prepare for negotiations to deal with issues raised by the American Airlines-US Airways merger ("Merger Negotiations"). Local 541 also had the need to confront the ongoing raid by the National Association of Airline Professionals ("NAAP"), which is seeking to displace TWU as the bargaining representative for the American Airlines simulator engineers and pilot instructors.

20. The Expenditure depleted Local 541 resources and significantly reduced the Local's ability to address Merger Negotiations and the raid by NAAP.

21. When Local 541 provided the Checks, the Local did so without issuing vouchers.

22. To receive the Check, the member signed the Check stub and wrote down an email address next to or below the signature.

23. Many of the Check stubs were retained by the Local.

24. The member did not have to verify that he or she used the Check to purchase a computer.

25. The Local Executive Board placed no restrictions on how a member spent the Check.

26. The Local Executive Board issued no written or oral communications to the simulator engineers and pilot instructors indicating for what the Check should be used.

27. The Local Executive Board implemented no system for verifying that the Check was used for computers, nor did it provide means for overseeing, tracking or verifying how the Check was spent by members.

28. Plaintiffs have found no evidence of any Local 541 member purchasing a computer because of receipt of the Check.

29. The TWU Constitution requires that a local not be wasteful in its expenditure or control of its assets; that it not gratuitously divide its assets among its members but instead use its funds for the legitimate purposes of the Local; and that payments not be made without vouchers. The Constitution requires Local Executive Board members to act in this circumstance as trustees.

30. No Local Executive Board member reported to TWU, or otherwise informed TWU about, the circumstances of the Expenditure.

31. Each Local Executive Board member breached his fiduciary duty to the Local and TWU by failing to report the matter to TWU and/or by voting in favor of the Expenditure.

32. The IEC determined that the Local Executive Board's approval of the Expenditure and the issuance of the Checks violated Article VIII, Section 9; Article 14, Sections 3 and 14; Article XVI, Section 5; Article XVI, Section 4; and Article XIX, Sections 5(a), 5(h) and 5(n) of the TWU Constitution.

Provision of Money to Local Counsel

33. In April 2014, the law firm of Seham, Seham, Meltz and Peterson, LLP (the "Seham firm") began performing work for Local 541 at the request of the Local Executive Board.

34. The Seham firm represents the Aircraft Mechanics Fraternal Association ("AMFA"), a union that has over the years and currently is seeking to displace TWU as the bargaining representative for American Airlines mechanics.

35. A retainer agreement between the Local and the Seham firm called for a retainer of \$10,000.

36. Fudge signed the retainer on June 6, 2014. The retainer stated the Seham firm would "provide services related to legal research and arbitration as required."

37. The Local instead paid considerably more to the Seham firm than the \$10,000 noted in the retainer agreement.

38. At a May 6, 2014 special meeting, the Local Executive Board approved a motion to "set aside" \$20,000 to pay the Seham firm for drug and alcohol abuse work.

39. A payment from the Local for \$20,000 was subsequently sent to the Seham firm.

40. TWU has an internal merger policy that provides a methodology for merging seniority lists when two air carriers merge and TWU represents both counterpart crafts or classes. TWU represents both crafts or classes of dispatchers at American Airlines and US Airways, airlines which have been in the process of merging.

41. The Local issued another payment to the Seham firm on July 11, 2014, for \$7,490.

42. This \$7,490 payment was allegedly related to work on seniority integration issues.

43. At a July 2, 2014 meeting, the Local Executive Board approved a motion to pay another \$20,000 for work to be performed related to seniority integration issues.

44. A payment from the Local for \$20,000 was subsequently sent to the Seham firm.

45. On information and belief, the Local Executive Board made the three payments to the Seham firm in part to deplete funds in the Local treasury.

46. At the request of Local 541 Administrator Gary Shults, on August 22, 2014, the Seham firm mailed a letter with a check issued to Local 541 for \$10,999.71.

47. The \$10,999.71 purportedly represented the unused portion of the Local 541 amounts provided to the Seham firm.

48. The Seham firm refunded no additional moneys to Local 541.

49. The Local Executive Board paid the Seham firm without the issuance of vouchers.

50. Through its payments to the Seham firm, the Local Executive Board set up a Local fund distinct from the regular Local treasury funds.

51. The TWU Constitution bars improper payments and the creation of a Local fund distinct from regular Local treasury funds. The TWU Constitution requires that payments not be made without vouchers.

52. No Local Executive Board member reported to TWU, or otherwise informed TWU about, the payments to the Seham firm.

53. The IEC determined that this conduct violated Article VIII, Section 9; Article 14, Sections 3 and 14; Article XVI, Section 5; Article XVI, Section 4; and Article XIX, Sections 5(a), 5(h) and 5(n) of the TWU Constitution.

Support of NAAP Raid Against Local 541

54. Local 541 is currently confronting a raid by NAAP, which is seeking to displace TWU as the bargaining representative for the American Airlines simulator engineers and pilot instructors.

55. The Local Executive Board failed to commit itself to TWU and against the NAAP raid.

56. On information and belief, by providing funds to Local members at American Airlines, as discussed above, the Local Executive Board members sought to build political support for themselves by using Local money.

57. The same Local Executive Board members have since the trusteeship confirmed that they had resigned their Local positions.

58. On information and belief, through the above-discussed actions, the Local Executive Board attempted to deplete the Local's treasury so that the Local would be unable to effectively oppose the NAAP raid.

59. Fudge is now NAAP's President.

60. On information and belief, Fudge resigned his position as Local 541 President after NAAP filed petitions with the National Mediation Board to represent the dispatchers, simulator engineers, and pilot instructors at American Airlines.

61. TWU also serves as collective bargaining representative for dispatchers employed by American Airlines and other airlines. TWU delegated to Local 542 certain responsibility for representation of these dispatchers.

62. Local 542, like Local 541 here, provided \$500 to its members; retained and provided large amounts of Local funds to the Seham firm; and failed to fight NAAP.

63. On information and belief, the Local 541 leadership coordinated its activity with the leadership of Local 542.

**FIRST CAUSE OF ACTION:
BREACH OF FIDUCIARY DUTIES UNDER THE LMRDA**

64. Plaintiffs repeat and reallege the foregoing paragraphs as if they are fully set forth herein.

65. By virtue of their positions and offices, Local 541 President Fudge and Local Executive Board members Smith, Campbell, Pike, Amaya, York and Stephens were fiduciaries of Local 541 and TWU under Section 501(a) of the LMRDA, 29 U.S.C. § 501(a). In expending Local monies on cashier's checks as described herein, Defendants breached their fiduciary duties owed to Local 541 and TWU under Section 501(a) of the LMRDA, 29 U.S.C. § 501(a).

66. As no member of Local 541 is a plaintiff in this action, there is no need to satisfy the prerequisites for filing suit under Section 501(b) of the LMRDA, 29 U.S.C. § 501(b).

**SECOND CAUSE OF ACTION:
BREACH OF FIDUCIARY DUTIES UNDER TEXAS COMMON LAW**

67. Plaintiffs repeat and reallege the foregoing paragraphs as if they are fully set forth herein.

68. By virtue of their positions and offices, Local 541 President Fudge and Local Executive Board members Smith, Campbell, Pike, Amaya, York and Stephens were fiduciaries of Local 541 and TWU under Texas common law. In expending Local monies on cashier's checks as described herein, Defendants breached their fiduciary duties owed to Local 541 and TWU under Texas common law.

PRAYER FOR RELIEF

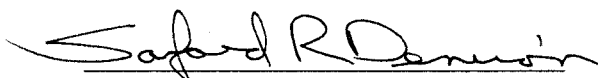
WHEREFORE, Plaintiffs respectfully request that this Court enter the following necessary relief:

- (a) A judgment granting Local 541 damages against Defendants, jointly and severally, in the amount of Local assets misspent for improper purposes in breach of their fiduciary duties to the Local and TWU;
- (b) An order requiring Defendants to pay Plaintiffs' reasonable attorneys' fees and costs incurred in bringing this action; and
- (c) Such other and further relief as this Court deems just and proper.

Dated: October 9, 2014

Respectfully submitted,

Michael L. Winston*
New York Registration No. 2054104
Joseph J. Vitale*
New York Registration No. 2300689
Jonathan F. Harris*
New York Registration No. 4874251
COHEN, WEISS AND SIMON LLP
330 West 42nd Street
New York, NY 10036-6976
Tel: 212-563-4100
Facsimile: 646-473-8223
Email: mwinston@cwsny.com
Email: jvitale@cwsny.com
Email: jharris@cwsny.com



Sanford R. Denison
Texas Bar No. 05655560
BAAB & DENISON, L.L.P.
6301 Gaston Avenue, Suite 550
Dallas, TX 75214
Tel.: 214-637-0750
Facsimile: 214-637-0730
Email: denison@baaddenison.com

Counsel for Plaintiffs

* Application for Admission
Pro Hac Vice to be Filed

JS 44 (Rev. 09/11)

CIVIL COVER SHEET

The JS 44 civil coversheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

Local 541, Transport Workers Union of America, AFL-CIO, and Transport Workers Union of America, AFL-CIO

DEFENDANTS

James Fudge, Earl Smith, Rick Campbell, Nate Pike, Marco Amaya, Ken York, and Mark Stephens

(b) County of Residence of First Listed Plaintiff District of Columbia
(EXCEPT IN U.S. PLAINTIFF CASES)

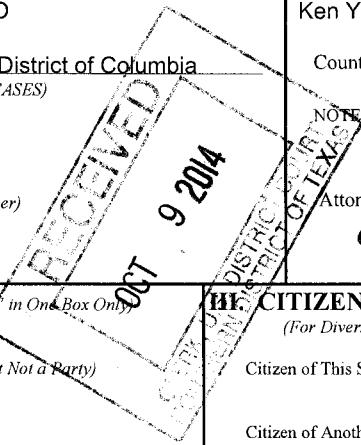
County of Residence of First Listed Defendant _____
(IN U.S. PLAINTIFF CASES ONLY)

(c) Attorneys (Firm Name, Address, and Telephone Number)

Attorneys (If Known)

See Attachment

3-14CV3639-L



II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff
- 3 Federal Question (U.S. Government Not a Party)
- 2 U.S. Government Defendant
- 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | | | | | |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| | PTF | DEF | | PTF | DEF |
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Med. Malpractice	PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input checked="" type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus - Alien Detainee (Prisoner Petition) <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes

V. ORIGIN

- (Place an "X" in One Box Only)
- 1 Original Proceeding
 - 2 Removed from State Court
 - 3 Remanded from Appellate Court
 - 4 Reinstated or Reopened
 - 5 Transferred from another district (specify)
 - 6 Multidistrict Litigation

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
29 U.S.C. § 501 (Labor Management Reporting and Disclosure Act); 28 U.S.C. § 1331 and § 1337

Brief description of cause:

Recover amounts former union officers misspent for improper purposes in breach of fiduciary duty to the union.

VII. REQUESTED IN COMPLAINT:

- CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23
- DEMAND \$ _____
- CHECK YES only if demanded in complaint:
 JURY DEMAND: Yes No

VIII. RELATED CASE(S) PENDING OR CLOSED:

(See instructions): JUDGE _____ DOCKET NUMBER _____

DATE: 10/9/14 SIGNATURE OF ATTORNEY OF RECORD: Sofard R. Dawson

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

Attachment to Civil Cover Sheet

I. (c) Attorneys (*Firm Name, Address, and Telephone Number*)

Michael L. Winston
New York Registration No. 2054104
Joseph J. Vitale
New York Registration No. 2300689
Jonathan F. Harris
New York Registration No. 4874251
Cohen, Weiss and Simon, LLP
330 West 42nd Street
New York, New York 10036
Telephone: (212) 563-4100
Facsimile: (646) 473-8219

Sanford R. Denison
Texas Bar No. 05655560
Baab & Denison, LLP
6301 Gaston Avenue, Suite 550
Dallas, Texas 75214
Telephone: (214) 637-0750
Facsimile: (214) 637-0730