



UNITY

Special Update from Local 2118

Union Special Update 13 JAN 2025

Re: GOM Revisions and Company Testimony

Part 1 - Update Summary

Part 2 - The Union Responds

Part 3 - Company Testimony

Part 1 - Update Summary

1. **The court did not rule on the merits of the Company's GOM changes.**
2. **Management's own testimony confirmed the Union's position on the merits of the GOM changes** — including Chief Pilot Hardesty, who stated under oath that no callback policy has ever existed off-duty and all responses were voluntary.
3. **The Company referred to longstanding policies that never existed** — Mr. Fishburn testified to a "standing" callback policy, despite zero contractual language, past practice, or evidence to support it.
4. **An injunction does not "endorse" management's position on the merits of the GOM additions or mean they are right.** The court **cannot rule on the merits** in this case.
5. **Fishburn's absurdity** — His testimony contradicts the CBA, past practice, years of documented Union guidance, and even his own Chief Pilot's testimony.
6. **Management used sexual assault/harassment and operational control concerns to justify off-duty contact.** The carrier has no authority to change the terms of our CBA or federal law unilaterally.
7. **The Union's strike threat was lawful when made and in accordance with CBA Section 1.K.1.** - Courts have recognized the right of unions to strike to restore the status quo in a major dispute and our CBA states clearly states: *"nothing herein shall preclude either party from exercising its legal rights to enforce status quo violations."* The district court ultimately held that our dispute was subject to arbitration and issued an injunction. The Union is in compliance with the injunction and will continue to comply as we prepare to take our case against Allegiant to arbitration, where we will use the Company's own words against them to beat back this attack on our rest periods and days off.

Part 2 - The Union Responds

Mr. Fishburn once again puts on a masterclass in deflection and fabrication. To quote one pilot, “another Union bad, Company good email.” His ever-amusing signature sign-off always reminds the pilots to ignore their Union but trust the company, who just wants to “work hard” to bargain in good faith. He did accurately determine however that the pilot group likely would not take the company’s word. He’s right, and for good reason. Despite their attempted portrayal of a lawless and irresponsible union, Mr. Fishburn’s communication makes no mention of the facts:

The company unilaterally implemented new rules and working conditions that are a clear violation of our Collective Bargaining Agreement and past practice.

Management’s *own testimony under oath* confirms this. Despite sending you five (5) otherwise useless court documents, **Mr. Fishburn conveniently “forgot” to attach *the actual court transcripts*** so that you could read the company’s bizarre testimony and admissions for yourself. Unsurprisingly, he cherry-picked the parts that *he thought* you needed to see. We’ve attached those transcripts to this email for your reading pleasure.

The fact is that our pilots have **never** been required to return telephone calls, check messages, or check schedules during their CBA-protected, negotiated Days Off and Rest Periods. **Your Days Off and Rest Periods are express, negotiated provisions of your contract. They belong to YOU, not management.** Management’s new policy represents a unilateral change to your working conditions, a clear violation of express provisions of our contract,. The fact that a court granted an injunction to prevent a strike does not change this fact. Management’s insistence that you be perpetually responsive to them, frivolously disguised as an “operational control” necessity, will be put addressed in arbitration. Management’s testimony under oath provided the Union and its pilots with everything needed to dismantle their argument in arbitration.

It is important to understand that the court **did not rule on the merits** of this case. The court does not “agree” with the company on the merits as Mr. Fishburn implies, but only that the parties must resolve this issue in arbitration. Injunctions can be easy to get for carriers; the law works in their favor. Mischaracterizing an injunction as the court’s *endorsement* of Allegiant’s position on the merits of this dispute is foolish.

Injunctions are not hard to get, but defending your contract is - and it’s the right thing to do. Mr. Fishburn acknowledging that the company is willfully violating your CBA while asserting some moral high ground is great theater. We encourage you to continue to give little to no weight to Mr. Fishburn’s updates, as most of you already know. We remind you that responding to Mr. Fishburn directly via email may lead to a Section 18 meeting and potential discipline, as other pilots have learned. Proceed cautiously.

Part 3 - Company Testimony

At the hearing, Mr. Fishburn claimed the disputed GOM changes reflect a standing policy that existed since the contract began. Mr. Fishburn falsely claims that the company's new "callback" policy, which demands that you acknowledge company calls, check your schedule, and respond to management during your Day(s) Off and Rest Periods, has been a standing company policy. See Below:

Fishburn Claims Prior Policy Existed

Union Counsel: *"Now, this policy says that when a pilot is not on duty, they still have an obligation to respond...[d]oesn't that place a duty on the pilot on their days off?"*

Fishburn: *"That responsibility has existed unfettered until recently when the Union unilaterally tried to implement a change, informing pilots that they no longer need to do this."*

As the Vice President of Labor Relations, Mr. Fishburn should be well aware that there was never a "responsibility" or obligation to acknowledge or return telephone calls while on Days Off or during Rest Periods. His claims to the contrary are either ignorance or a fabrication of his own mind. Incredibly, Mr. Fishburn claims that it is the Union, and not the company, who has changed the status quo.

Fishburn Claims Union Violates Status Quo

"Unilaterally going back on a -- on an issue that was asked and then answered, right? The Union did not prior take that position. In fact, they said, "That is not our position," so they unilaterally implemented a new position, that pilots don't have to return phone calls to management."

As Vice President of Labor Relations, Mr. Fishburn refers to a policy that has ***never existed*** at Allegiant Air under this contract. First, our CBA is crystal clear - pilots must not have assigned Duty during their Days Off and requiring pilots to participate in meetings on a Day Off is expressly prohibited, telephonically or otherwise. Second, the Union positions and its messaging to pilots have been consistent and properly aligned with our CBA since 2016.

Union Positions Regarding Off Duty Contact

"A pilot is only required to answer his phone or return a phone call while on Reserve, and then it must be done within 10 minutes (14.G.2)." 2016 CBA Survival Guide, Version 4.3

You are not required to answer your phone, check emails, listen to voicemails, etc. on your Day Off." -Union Update to Pilots, September 2022

“Under the contract, you are not responsible for checking your schedule on your day off. You are not responsible for answering your phone on your day off. A voice message is not “Positive Contact.” - Union Update to Pilots, February 2017

“A crew member is not responsible for picking up or answering his phone on a Day Off nor is he responsible for checking his schedule on a Day Off.” -2016 CBA Survival Guide, Version 4.3

“There is nothing in the CBA stating that a pilot who is not on reserve must return a voicemail, or even carry a phone while at work.” -Union Update June 2017

“Requiring a pilot to answer their phone when they are on their time off, (during a rest period) is Duty per the FAA....[the FAA] clearly prohibits a company from requiring crewmembers to answer the phone or check their schedules on a day off without it being considered on-duty. Requiring a pilot to check his schedule on a day off would require the “duty” to be tracked and rest to be reset...Thankfully after extended discussion [the company] determined that previous practices were best practices and have gone back to their years-old interpretations.” - Union Update July 2020, after management’s 1st attempt to unilaterally require off-Duty contact and Duty obligations.

Mr. Fishburn further testified under oath that Mr. Andrew Robles (former Local 2118 President), Mr. Maury Gallagher, and himself had a meeting in August 2022 in which Mr. Robles allegedly altered the CBA, standing past practice, and the Union’s position regarding off-Duty “callback” obligations. Unsurprisingly, Mr. Fishburn can provide no proof or record of any such meeting occurring, much less any agreed to modification to the CBA or standing past practice. Despite this alleged “meeting” and new “agreement,” the Union’s September 2022 Update to pilots reiterated the Union’s position regarding off-Duty contact.

September 2022 Union Communication

*“If emailed, phoned, or questioned regarding any event or situation by the Company, we always encourage you to delay the conversation until you can seek representation. Section 18 and Section 25 outline the channels the Company **MUST go through in order to communicate with Members regarding a specific event or potential discipline. You are not required to answer your phone, check emails, listen to voicemails, etc. on your Day Off.**”*

Our CBA is clear and unambiguous on this subject. A pilot has no obligation to the company, including an obligation to return phone calls, during any CBA-defined Rest Period or on a Day Off. To further clarify the Union’s position, Mr. Robles even wrote to Mr. Gallagher directly in October of 2022 and re-iterated that there were absolutely no changes to the Union’s position. The communication clearly stated that any such off-duty obligations were “a clear violation” and

that the issue was “pretty cut and dry.” The proceeding testimony by System Chief Pilot Captain Rodney Hardesty would erase any doubt regarding the past practice.

Testifying under oath, Chief Pilot Captain Rodney Hardesty contradicts Mr. Fishburn confirming that no mandatory off-Duty contact or “callback” policy has ever existed at Allegiant Air. Any pilot who replied to management’s attempted contact while off-Duty did so of their own volition; participation was purely voluntary and non-punitive.

Captain Hardesty Affirms Standing Policy

Company Counsel: *“Okay. So let's go back to when you were flying the line. What was your recollection of the general practice about communications between the Company and pilots?”*

Hardesty: *“...If they reached out to you while you were off duty, **there was -- there was no obligation for you to call them back**, but there was an expectation that if there was some operational issue that they had asked, that **if you wanted to call via your own volition, then you could call them back.**”*

A pilot has no obligation to the company, including an obligation to return phone calls, during any CBA-defined Rest Period or on a Day Off. Captain Hardesty’s statements are clear, unambiguous, and a direct contradiction of Mr. Fishburn’s testimony. Mr. Fishburn’s claims were either a poor recollection of the facts or a figment of his imagination. The company’s counsel attempted to “repair” Captain Hardesty’s testimony during cross-examination, attempting to limit the scope of Captain Hardesty’s testimony to a so-called, company-defined “required rest period”. He was unsuccessful. Despite the counsel’s attempts to change the record, the Chief Pilot’s testimony confirms that an off-Duty or Rest Period “callback” policy has never existed as Mr. Fishburn claimed, “unfettered” or otherwise. This new policy is a change to standing past practice and the status-quo.

Counsel Attempts to Repair Witness Testimony

Company Counsel: *“So when you say that there was no requirement for them to call you back, do you mean during the required rest period or at all? So if -- back when you were a pilot, if a Chief Pilot had called you, is it your understanding that you didn't have to call them back during the required rest period, as defined in the FAR's?”*

Hardesty: *“Yeah. So you would never have to call them back during the required rest period, per the FAR's, but if I had seven days off and, **during the course of my normal life, I saw a call from the Chief Pilot and I listened to that voicemail and wanted to -- chose to call him back during that time, then I would.**”*

Company Counsel: *“And the “during that time,” you're talking about the required rest period?”*

Hardesty: *“No, not during the required rest period. Just from the time that you -- if you were off duty but not in your required rest period.”*

Management repeatedly attempts to alter our CBA-defined Rest Period by repeatedly referring to what it calls “required rest.”, which has no basis in our contract or the FARs.. Management’s viewpoint is that “required rest” refers to the minimum required hours of sleep opportunity immediately preceding a flight. Thus, according to management, you may be disturbed or obligated to perform duties on your Days Off or any contractually guaranteed Rest Period that doesn’t meet their made up definition of a “required rest” period.

Our CBA is crystal clear - our **negotiated** Rest Period during which pilots must be “free from all restraint” from the carrier is from Duty Off to subsequent Duty On. There is no contractual or legal basis which allows management to modify this express provision of our contract. During further cross-examination by the Union’s counsel, Captain Hardesty confirms that there is no such separation between “required rest” and “rest period” in the FARs:

Company Counsel: *Mr. Hardesty, as the 119 for the airline, are you aware of any FAR's that separate the term "rest" from "required rest"?*

Hardesty: *In the FAR's? No.*

The company’s principal officers repeatedly displayed a lack of understanding both the FARs and our CBA provisions on the subject. Duty, for example, is defined as **“[a]ny task that a Flight Crewmember performs as required by the certificate holder...”** by both the FAA and our CBA. This doesn’t seem to matter to management. During cross-examination, Captain Hardesty was hesitant to acknowledge during his testimony that required telephone calls are in fact a Duty, per FAA regulations and your CBA.

Union Counsel: *Within Section 2 are definitions. Are you familiar with the terms of "duty" and "rest period" --*

Hardesty: *Yes.*

Union Counsel: *Is "duty" any task assigned by the carrier to a pilot?*

Hardesty: *Yes.*

Union Counsel: *Okay. So being required to return a phone call, is that "duty?"*

Hardesty: *I don't see that in this definition.*

Union Counsel: *You don't see it in the definition. Could you look just in the second line of the definition where it says, "including but not limited to"? Are you saying it's not within the definition because it's not one of these enumerated items?*

Hardesty: *So ask me the question again because I'm not sure what you're...*

As the Part 119 designee, it is hard to fathom that Captain Hardesty is truly unaware that the FAA "definition of "duty" includes the obligation to return phone calls." (FAA Interpretation (FAAI) 27 SEP 2016). Despite countless regulatory clarifications on the subject, Captain Hardesty insists that Allegiant's new policy does not violate the basic principles of FAA defined Duty or Rest.

Union Counsel: *No. My question to you was whether a pilot being **required to return** your office or a regional Chief Pilot's phone call is "duty." (emphasis added)*

Hardesty: *No.*

Union Counsel: *Why is it not "duty"?*

Hardesty: *Because, there again, they can return a call to my office **at their own volition.** (emphasis added)*

Captain Hardesty stated that the pilot could return the telephone call "at their own volition." If the pilot has always had the right to *voluntarily* return telephone calls "at their own volition," then why would these new obligations be required in the first place? The company's intentions become crystal clear later in the testimony.

Union Counsel: *Okay. So a pilot is off duty, they receive a phone call from Chief Pilot's office. It's up to them whether or not they return the call?*

Hardesty: *The expectation is, at the earliest practicable time that they're not on required rest that they understand they've got a phone call from the Chief Pilot about some operational issue that we need to address, that they return a phone call.*

Union Counsel: *And if they don't return the phone call, are they subject to discipline or not?*

Hardesty: *Depends.*

Union Counsel: *Okay. So "depends" means maybe yes, maybe no?*

Hardesty: *Correct.*

Captain Hardesty confirms that if a pilot does not "voluntarily" return the telephone call "at their own volition", then they are subject to discipline. A voluntary action **cannot** have a threat of punishment or a punitive consequence; such actions are **obligatory**. The FAA agrees, stating: "by threatening to take adverse action if the pilot did not respond, [the carrier] indicated that it expected its pilot to answer the telephone and/or respond to its phone message." -FAAI 5 JUL 2017. The obligation to return a telephone call is Duty. The obligation to check your schedule to determine if you are within a so-called "required rest period" is Duty.

Per our CBA, a Day Off is a day "free of all Duty" as defined by the FAA. The CBA-defined Rest Period is between Duty Off and Duty On, during which time the pilot must be "free from all restraint" from the carrier – including any standing obligation to return telephone calls. Beyond our CBA, the FAA states clearly that such obligations are Duty, regardless of whether the carrier *actually* calls you or not.

FAA: "if the pilot is obligated to answer the telephone, or respond [to contact], then the entire period that the pilot is under such an obligation is not considered part of the continuous rest period, **even if the carrier does not call the pilot once during that period.**" -FAAI 16 JUN 2009

Captain Hardesty attempts to legitimize the carrier's position, suggesting that mandatory off-Duty or Rest Period contact and callbacks are a **requirement** for *operational control*.

Captain Hardesty Claims Operational Control

Company Counsel: "Got it. So let's pivot a little bit and talk about why we're here today, which is, I mean, at a very high level, communications between the Company and pilots. As Chief Pilot, Part 119 designee, tell me why it's important for you to be able to communicate with pilots."

Hardesty: "Well, it's important for me to communicate with pilots because I've gotta maintain, as the 119, operational control of the airline, meaning, you know, anything that could potentially happen during the operation, I need to be able to reach out to the pilots and get answers if I have any of the entities, FAA, NTSB, you name it, reaching out to me to get answers about certain things that might be happening operationally."

Company Counsel: "And can you tell us how -- the context of this email? Were you discussing -- what were you discussing with your POI?"

Hardesty: "We were discussing with our POI that our original intent of the provision that we put in the GOM was never to break any FAR's, regulations, rest requirements, any of that kind

of stuff. It was merely that we needed to maintain operational control of the airline and that we expected our pilots to call us back.” (emphasis added)

Captain Hardesty claims that the GOM provision was simply a necessity for operational control of the airline. As a reminder, the FAA defines operational control as “*the exercise of authority over initiating, conducting or terminating a flight.*” Why would a pilot, on their Day Off, need to be contacted for these reasons? FAA Manual 8900.1, Volume 3, Chapter 25 governs basic Operational Control requirements and makes **absolutely no mention** of any requirement to impose off-Duty obligations on pilots for the purpose of Operational Control. Any such requirement would clearly conflict with virtually every FAA interpretation on the subject of Duty and Rest.

Major airlines do not have the arrogance to suggest such off-Duty obligations are necessary for operational control, much less to testify under oath to the same. Consider the following from Frontier’s CBA: “[a] Pilot will not be required to respond to any notification attempt that occurs outside of a Duty Period.” Is Frontier management recklessly conducting operations without operational control because their pilots have no off-Duty obligations to the carrier? **Obviously not.** Operational control has absolutely nothing to do with the carrier’s desire to impose new off-Duty regulations. Allegiant’s justification has no legal nor contractual legitimacy.

Probably recognizing the weakness of its own argument, the carrier attempted to use the issue of sexual assault and harassment as a means to justify these new off-Duty obligations. Suggesting that the potential for sexual assault on layovers requires that the company impose new obligations during a pilots Rest Period or Day Off is pathetic and incoherent and exploitative.

First, Sexual Assault is already illegal. Using such serious issues as a prop to gain leverage is offensive and ridiculous. Second, the carrier has rights to set standards for on-Duty conduct and, in some cases, discipline pilots for off-Duty conduct when there is a nexus to work. Your CBA provides for Days Off and Rest Periods that are *free from all restraint* of the carrier. We will continue to fight to defend those rights.

Company Counsel Statement on Sexual Assault and Harassment

“[the Union counsel] apparently believes that an airline like Allegiant could not prohibit its pilots from engaging in sexual assault or harassment while on a layover. Airlines have a unique issue at least in that context of what pilots do when they’re on layovers. [the Union counsel] thinks that, “Because I’m on a layover, I’m not on a -- I’m not on duty. I can do whatever I want. The airline can’t control my time off duty.” By his view, Allegiant could never adopt a policy that says, don’t harass hotel staff in the hotels we’re putting you at, don’t harass the flight attendants you’re working with. You’re off duty. You can do whatever you want. I

don't think we'd have enough paper in this courthouse to print off the arbitration awards upholding terminations of pilots for that exact conduct."

Allegiant Air and its management has no universal right to regulate your off-duty life. **You are not management's property.** In no uncertain terms, our CBA defines Duty, Days Off, and Rest Period. Your basic rights to manage your off time as you see fit without interference or obligation from management is an inalienable right in our contract. We will fight to restore those rights in arbitration.

In Unity,

APA Local 2118