

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO**

TenEyck LaTourrette,	)	
	)	
Plaintiff,	)	Case No. 1:12-cv-00635
	)	
v.	)	
	)	
United Airlines, Inc.,	)	
	)	
Defendant.	)	

**COMPLAINT**

Plaintiff, TenEyck LaTourrette (“LaTourrette”), by the undersigned attorneys, alleges:

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” or “Act”).

**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. (“UAL”) is a private employer that maintains places of business in the district of this United States District Court, and a substantial part of the events giving rise to the claims in this action occurred in this district.

**PARTIES**

4. LaTourrette resides in Aurora, CO, which is within the jurisdiction of this Court.

5. UAL is an Illinois corporation that operates airline service from Denver International Airport in Denver, CO, and is an employer within the meaning of 38 U.S.C. § 4303(4)(A).

**CLAIM FOR RELIEF**

6. On or about May 18, 1998, LaTourrette was hired by UAL as a student flight officer. He was promoted to the rank of Co-Pilot in 1999.

7. UAL is required to contribute to two pilot pension funds – the B Fund and the C Fund -- at a rate of 9% of a pilot’s earnings into the B Fund and 6% of a pilot’s earnings into the C Fund.

8. A UAL pilot’s earnings are not reasonably certain from month to month and depend upon the flights that they are successfully able to bid on through the UAL flight bidding process.

9. On or about December 2000, LaTourrette joined the 120<sup>th</sup> Flight Squadron, Colorado Air National Guard (“COANG”), enlisting as an E-5 Staff Sergeant.

10. LaTourrette received orders to report for active duty in the United States Air Force, effective on or about July 2, 2001. His initial orders covered two years of training and two years of seasoning. In advance of his tour of duty, LaTourrette gave notice of his upcoming deployment to management at UAL.

11. Following September 11, 2001, LaTourrette’s orders were changed and he was placed on contingency orders for specific wartime duty. During this wartime duty, LaTourrette was an F-16 fighter pilot with both domestic duty and foreign deployment in Iraq and Korea.

12. In 2004, while on military leave, LaTourrette served four months in advance deployment in support of Operation Iraqi Freedom pursuant to 10 U.S.C. § 12301(D). In 2006, he served an additional three months in advanced deployment under 10 U.S.C. § 12301(D).

13. LaTourrette was released from active duty on or about November 30, 2006.

14. LaTourrette promptly sought reemployment with UAL, and UAL timely reinstated him on or about December 1, 2006 with the rank of Co-Pilot.

15. For the twelve months preceding LaTourrette's tour of duty that began on July 2001, LaTourrette worked an average of 78.84 hours per month.

16. In February 2007 LaTourrette received a lump sum payment into his pension plan in the amount of \$52,047.80, which UAL paid to purportedly cover the required employer's contribution during his military service between 2001 and 2006.

17. UAL based LaTourrette's deemed monthly earnings on the monthly minimum flight hours guarantee as listed in the collective bargaining agreement between UAL and the Air Line Pilots Association ("ALPA") and not on LaTourrette's monthly average number of hours that he worked for the twelve months prior to his leave. As a result, UAL based LaTourrette's pension payments on monthly minimum flight hour guarantees of 75 hours between July 2001 and April 2003 and 70 hours after April 2003. Basing LaTourrette's pension payments on 75 or 70 hours worked per month, instead of 78.84 hours per month resulted in an underpayment to LaTourrette's pension.

18. LaTourrette was recalled to active duty service with the Air Force on or about November 19, 2007 as an F-16 pilot and was redeployed to Iraq in continued support of Operation Iraqi Freedom under 10 U.S.C. § 12301(D). His second tour of duty extended through

February 2008. In advance of his tour of duty, LaTourrette gave notice of his upcoming deployment to management at UAL.

19. For the twelve months preceding his tour of duty commencing in November 2007, LaTourrette worked an average of 79.707 hours per month.

20. On or about February 2008, LaTourrette promptly sought reemployment with UAL, and UAL timely reinstated him with the rank of Co-Pilot.

21. On or about April 2008, LaTourrette received a lump sum payment into his pension plan, which UAL paid to purportedly cover the required employer's contribution during his military service between 2007 and 2008.

22. UAL based LaTourrette's deemed monthly earnings on the monthly minimum flight hours guarantee of 70 hours listed in the collective bargaining agreement between UAL and the ALPA and not on LaTourrette's monthly average number of hours that he worked for the twelve months prior to his leave. Basing LaTourrette's pension payments on 70 hours worked per month, instead of 79.707 hours per month resulted in an underpayment to LaTourrette's pension.

23. In April 2010, LaTourrette was again called to active duty with the Tucson Air National Guard flying in the Instructor Pilot Program. Those orders ended in May 2010. In advance of his tour of duty, LaTourrette gave notice of his upcoming deployment to management at UAL.

24. For the twelve months preceding his tour of duty commencing in April 2010, LaTourrette worked an average of 76.671 hours per month.

25. On or about June 2010, LaTourrette was reinstated by UAL, and received a lump sum payment into his pension plan, which UAL paid to purportedly cover the required

employer's contribution during his military service between April 2010, and June 2010. UAL based LaTourrette's deemed monthly earnings on the monthly minimum flight hours guarantee of 70 hours listed in the collective bargaining agreement between UAL and the ALPA and not on LaTourrette's monthly average number of hours that he worked for the twelve months prior to his leave. Basing LaTourrette's pension payments on 70 hours worked per month, instead of 76.671 hours per month resulted in an underpayment to LaTourrette's pension.

26. USERRA, 38 U.S.C. § 4318(a)(2)(B), provides that a servicemember's pension benefits will continue to accrue while he is on active duty.

27. USERRA, 38 U.S.C. § 4318(b)(3), provides that when a servicemember's rate of pay from his employer is not reasonably certain, employers should contribute to a servicemember's pension on the basis of the employee's average rate of compensation during the 12-month period immediately preceding a period of deployment.

28. Consistent with USERRA, on or about November 2010, UAL changed its method of calculating deemed pilots earnings while on military leave and began using a pilot's monthly average number of hours worked, as opposed to the collective bargaining agreement's minimum monthly flight hour guarantee.

29. UAL has not applied this policy correction retroactively and has not compensated LaTourrette for the incorrect method of calculating his deemed earnings prior to November 2010.

30. On January 4, 2011, LaTourrette signed a complaint with the Department of Labor Veteran's Affairs Office alleging that UAL had violated USERRA in its method of calculating his pension benefits while on military leave.

31. The Department of Labor's Solicitor's Office concluded that the USERRA complaint LaTourrette filed against UAL had merit.

32. The Department of Labor's Solicitor's office contacted UAL on or about June 24, 2011 informing UAL that LaTourrette's allegations were meritorious, and the matter was referred to the Department of Justice at the request of LaTourrette.

33. UAL violated USERRA, 38 U.S.C. § 4318, by, among other ways, underfunding LaTourrette's pension upon his return from military service.

34. Because of UAL's actions in violation of 38 U.S.C. § 4318, LaTourrette has suffered lost pension funds.

**PRAYER FOR RELIEF**

WHEREFORE, plaintiff LaTourrette prays that this Court grant the following relief:

A. Declare that defendant UAL's failure or refusal to properly fund LaTourrette's pension was unlawful and in violation of USERRA;

B. Order defendant UAL to comply fully with the provisions of USERRA by paying LaTourrette for his loss of pension funds suffered by reason of UAL's failure and refusal to comply with the provisions of USERRA;

C. Award LaTourrette prejudgment interest on the amount of lost pension funds and other benefits found due;

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

E. Grant LaTourrette such additional relief as may be just and proper, together with its costs and disbursements in this action.

Date: March 13, 2012

Respectfully submitted,

THOMAS E. PEREZ  
Assistant Attorney General  
Civil Rights Division

BY: s/ Delora Kennebrew  
DELORA KENNEBREW (GA Bar No. 414320)  
Chief  
Employment Litigation Section  
Civil Rights Division

s/ Andrew Braniff  
ESTHER G. LANDER (DC Bar No. 461316)  
Deputy Chief  
Andrew G. Braniff (IN Bar No. 23430-71)  
Brian G. McEntire (VA Bar No. 48552)  
Senior Trial Attorneys  
Employment Litigation Section  
Civil Rights Division  
United States Department of Justice  
950 Constitution Avenue, NW  
Patrick Henry Building, Room 4036  
Washington, DC 20530  
Telephone: (202) 514-9229  
FAX: (202) 514-1005  
E-mail: [andrew.braniff@usdoj.gov](mailto:andrew.braniff@usdoj.gov)  
Attorneys for Plaintiff TenEyck LaTourrette