The Network Journal
Black Professionals and Small Business News

United Continental Sued By Black Pilots

By: ANN BROWN
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Twenty-two African American pilots have sued the world´s largest airline--United Continental—for racial discrimination. According to the pilots, the airline promoted minority employees to upper management positions fewer times than they did white employees. They also claim in the suit that almost all of the Black workers at United Continental are in non-management posts. The lawsuit requests back pay, punitive damages, and that United end "discriminatory practices."

Megan McCarthy, United Continental corporate communications told The Network Journal "United does not tolerate harassment or discrimination of any kind. We believe this lawsuit is without merit and we will vigorously defend ourselves."

Cases such as this can be difficult to win, say legal experts. "It depends on the evidence, but cases that end up in litigation generally are not (always successful) cases, as those have settled well before the case would have been filed. Cases in litigation tend to be ones that have facts that are open to a lot of different interpretations, such as he-said/she-said scenarios," says Christopher Ezold, partner at The Ezold Law Firm. "Therefore, cases in litigation tend to be harder to win; I believe the current statistic is that employers win over 60% of such cases."

Charles Krugel, human resources attorney and counselor, agrees. "These cases are very difficult to prove and win. It takes a lot of credible evidence that the 22 employees were denied promotion solely or primarily because of their race (being Black)," he says. "United Continental has to prove that there were other legitimate business reasons for denying those employees the sought after promotions."

What do the pilots have to prove? "There is a shifting burden of proof in these cases," explains Ezold. "First, the pilots have to prove their 'prima facie case'--that is, that they are qualified to do the jobs they were denied, are in a protected class, and that the decisions to deny them the promotions they sought were made in circumstances that lead to an inference of discrimination. Then, the employer gets to respond by proving that they have a legitimate business reason for their decisions. Finally, the burden shifts back to the pilots, who would have to prove that the proffered legitimate business is a pretext, or lie, covering up discrimination. A jury can infer discrimination if they find that the employer lied."

Many cases like this do not make it to trail, but are settled out of court. "Typically, the outcome of this kind of case is settlement because that's usually what the plaintiffs and their counsel are seeking. The goal is to make it past the 'summary judgment' phase of litigation. That is, they're trying to avoid dismissal of the case prior to going to trial because in theory, defendants don't want the exposure and potential liability encumbered with a federal trial," explains Krugel.

United Continental was founded when in 2010 the parent company of United Airlines, UAL Corp., merged with Continental Airlines Inc.

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