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IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

KAREN FRANCES ULANE,

Plaintiff,

vs.

EASTERN AIRLINES, INC., A Delaware
Corporation, FRANK BORMAN, THOMAS R.
BUTTION, DAVID P. MILLETT and
ROBERT SHIPNER,

Defendants

DOCKETED
APR 05 1984

84-1272

Docket No. 81 C 4411

Chicago, Illinois
September 29, 1983
10:10 a.m.

84-1431

APR - 5 1984

H. S. ... Clerk
United States District Court

EXCERPT OF PROCEEDINGS
BEFORE THE HONORABLE JOHN F. GRADY

TRANSCRIPT ORDERED BY: MS. CATHERINE TINKER

For the Plaintiff:

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Chicago, Illinois 60604

U.S.C.A. - 7th Circuit
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THOMAS P. STRUBBE
CLERK

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1
2 THE COURT: All right, let's have the next witness
3 for the plaintiff.

4 MS. CLAYTON: Plaintiff calls Thomas R. Buttion.

5 MR. BROWN: I will get him. He is in the hall,
6 your Honor.

7 THE COURT: Okay.

8 MR. DICKIE: Would it be appropriate to take five
9 minutes here?

10 THE COURT: No, let's keep going.

11 MR. DICKIE: Okay.

12 (Brief interruption)

13 THE WITNESS: Good morning.

14 THE COURT: Good morning.

15 THOMAS R. BUTTION, Plaintiff's witness, sworn

16 DIRECT EXAMINATION

17 BY MS. CLAYTON:

18 Q Mr. Buttion, would you please state your name for
19 the record?

20 A Thomas R. Buttion.

21 Q Mr. Buttion, you are the senior vice-president in
22 charge of flight operations for Eastern Airlines, aren't
23 you?

24 A That is correct.

25 Q You have held that position ever since 1975?

1 A Senior since '77, vice-president since '75.

2 Q By way of educational background, you are a high
3 school graduate, is that right?

4 A Correct.

5 Q The only college education you have had consists of
6 some courses that you took as a part of the Air Force
7 aviation cadet program in the early '40s, is that right?

8 A And others at Eastern, yes.

9 Q A few other courses at Eastern?

10 A University of Iowa.

11 Q You have never received any other degrees, have you,
12 Mr. Buttion?

13 A That is correct.

14 Q You are not an aerodynamic engineer, are you?

15 A That is correct.

16 Q And you have no training in engineering of any type,
17 do you?

18 A That is correct.

19 Q You also have no medical training whatever, is that
20 right?

21 A That is correct.

22 Q Mr. Buttion, do you know what gender dysphoria is?

23 A No.

24 Q You don't know what it is, but you have read a little
25 bit about it, haven't you?

1 A That is true.

2 Q Is it fair to say that the only thing you have read
3 about gender dysphoria are some articles you have seen in
4 the newspapers?

5 A Basically correct, yes.

6 Q Focusing on the period before 1980, is it fair to say
7 that the only article you can remember ever reading on the
8 subject of gender dysphoria or transsexuality is an article
9 that appeared in the Baltimore Sun?

10 A That is correct.

11 Q Karen Ulane was terminated by Eastern Airlines in
12 1981, in April, wasn't she?

13 A That is correct.

14 Q Before Eastern made the decision to terminate Ms.
15 Ulane, that newspaper article in the Baltimore Sun was the
16 only information you had ever read about gender dysphoria
17 or transsexuality, right?

18 A Correct.

19 Q Mr. Buttion, as vice-president in charge of flight
20 operations for Eastern Airlines, you are the person who
21 is in charge of terminating pilots, aren't you?

22 A Correct.

23 Q In fact, the only person that you have to report to
24 or the only person you have to answer to in that regard is
25 Colonel Frank Borman, isn't that right?

1 A Correct.

2 Q Since assuming the duties as vice-president of flight
3 operations and presently senior vice-president, the only
4 pilot that you have ever personally terminated is the
5 plaintiff, Karen Ulane, isn't that right, Mr. Buttion?

6 A Would you re-state that question, please?

7 Q Ever since you have been vice-president of Eastern
8 in charge of flight operations and you have had these duties
9 of being in charge of termination, the only pilot that you
10 personally have ever terminated is the plaintiff, Ms. Karen
11 Ulane, isn't that right?

12 A Personally written a letter; involved in many others,
13 yes.

14 Q I just want to clarify.

15 Colonel Borman is the only person who has to
16 authorize your decision to fire a pilot, isn't that right?

17 A He has to be made aware of my decision, yes.

18 Q Right, he could countermand it if he wanted to, but
19 he has never done so, has he?

20 A He has asked us questions before, but he has never
21 countermanded it, no.

22 Q Mr. Buttion, you personally fired Karen Ulane, didn't
23 you?

24 A I signed the letter that terminated Karen Ulane, yes.

25 Q I would like you to take a look at the document we

1 have marked as Plaintiff's Exhibit 1.

2 May I approach the witness, your Honor?

3 THE COURT: Yes.

4 BY MS. CLAYTON:

5 Q Would you please take a look at what has been marked
6 as Plaintiff's Exhibit 1?

7 Shall I hand a copy up to your Honor?

8 THE COURT: Yes, please.

9 BY MS. CLAYTON:

10 Q Mr. Buttion, have you had a chance to look over what
11 is marked as Plaintiff's Exhibit 1?

12 A Previously, yes.

13 Q This in fact is a copy of the letter by which you
14 terminated the employment of Ms. Karen Ulane, isn't that
15 right?

16 A Correct.

17 MS. CLAYTON: I would move Plaintiff's Exhibit
18 1 into evidence, your Honor.

19 THE COURT: It is received.

20 (Plaintiff's Ex. 1 was received in evidence.)

21 BY MS. CLAYTON:

22 Q Mr. Buttion, I would like to ask you can you see the
23 chart which we have prepared here, which is a blow-up of
24 that very exhibit that we identified as Plaintiff's Ex-
25 hibit 1?

1 A I can see it in total.

2 MR. DICKIE: Can you see it, Mr. Buttion?

3 THE WITNESS: Yes.

4 BY MS. CLAYTON:

5 Q That is an accurate copy of the document that you have
6 in front of you, isn't it, Mr. Buttion?

7 A It is a facsimile of it, I would expect.

8 Q Mr. Buttion, before Ms. Ulane was fired by Eastern,
9 she had flown for Eastern for approximately twelve years,
10 isn't that right?

11 A She was hired in '68, terminated in '81.

12 Q She had actually flown until about the end of '79,
13 for a total of twelve years actively flying planes for
14 Eastern, isn't that right?

15 A She went on sick leave, I believe, in August of '79.

16 Q So do you agree with me that would be about twelve
17 years?

18 A I didn't do the mathematics, ma'am. I hope yours is
19 correct.

20 Q Well, we can certainly state that she flew from '68
21 to '79; is that all right?

22 A Correct.

23 Q Mr. Buttion, during that entire period of approxi-
24 mately twelve years, Ms. Ulane never had any problems what-
25 soever flying the airplanes, did she?

1 A To my knowledge, no.

2 Q To your knowledge, she never had an accident?

3 A That is correct, to my knowledge.

4 Q And to your knowledge she never had an incident?

5 A To my knowledge.

6 Q And to your knowledge she never had any problems deal-
7 ing with any type of emergency situation in all those
8 twelve years she flew for Eastern, did she?

9 A I didn't know that she was involved in any emergency
10 situations, ma'am.

11 Q You never heard of her having any problems dealing
12 with any emergency situation during that period, did you,
13 Mr. Buttion?

14 A I didn't know that she was involved in any emergency,
15 ma'am, so I can't answer that question.

16 Q So you certainly didn't hear of any problems, right?

17 A That is correct.

18 Q Mr. Buttion, you looked pretty hard through Ms. Ulane's
19 records to find something negative there, didn't you, be-
20 fore you fired her?

21 A I have looked pretty hard for any emergencies in
22 Ulane's records; no, ma'am.

23 Q When you looked pretty hard through her records,
24 did you notice all the letters of commendation that were
25 contained in her personnel file?

1 A I did not personally review her personnel file.
2 It is in Chicago.

3 Q I see. You never bothered to look at her personnel
4 file at all before signing that letter, which is Plain-
5 tiff's Exhibit 1?

6 A Ma'am, it is in Chicago. Captain Causey is the
7 director and chief pilot. I would rely on him.

8 Q So you relied on Captain Frank Causey to review
9 Ms. Ulane's file, is that correct?

10 A Personnel file, yes.

11 Q He told you a little bit about that file, didn't he,
12 Mr. Buttion?

13 MR. BROWN: Your Honor, I am going to object
14 mainly to the form. At one time we started going into a
15 flight file, and now we are going into a personnel file.
16 I believe it has to be established that there is a dis-
17 tinction between them.

18 THE COURT: Well, we don't want any ambiguity
19 here. Let's find out.

20 BY MS. CLAYTON:

21 Q That is fine.

22 Mr. Buttion, I understand you never reviewed
23 Ms. Ulane's personnel file and you relied on Mr. Causey
24 to look at that, didn't you?

25 A Correct.

1 Q Is there another file called the flight file?

2 A Yes.

3 Q Did you personally review that file?

4 A That is also in Chicago. No, I did not.

5 Q So did Mr. Causey also review the flight file?

6 A He has it in his possession all the time, yes.

7 Q So you relied on Mr. Causey to review the flight
8 file as well as the personnel file, which were both loca-
9 ted in Chicago; that is fair to state, isn't it?

10 A Yes, ma'am.

11 Q Is there any other file we should know about that
12 you either reviewed personally or relied on someone else
13 to review, Mr. Buttton?

14 A No.

15 Q Now during the whole time Ms. Ulane flew for Eastern,
16 you had never heard any negative reports from anyone in
17 the entire system concerning any negative performance that
18 she had engaged in, did you?

19 A I have not heard any negative reports.

20 Q I am sorry. Would you please speak up? I couldn't
21 hear your answer.

22 A I said I had not heard of any negative report.

23 Q Mr. Frank Causey, he was Ms. Ulane's chief pilot,
24 right?

25 A Correct.

1 Q She answered directly to him; he was in charge of
2 all the Chicago pilots?

3 A Correct.

4 Q He talked with you at some length about Ms. Ulane
5 before she was fired, didn't he?

6 A We had several telephone calls, yes.

7 Q Right. Now, he certainly never hinted that Ms. Ulane
8 had ever shown poor performance, did he, Mr. Buttion?

9 A No.

10 Q In fact, Mr. Frank Causey, Karen Ulane's chief pilot,
11 told you that he liked Karen, didn't he?

12 A I don't remember that.

13 Q You certainly don't remember him saying he didn't
14 like her, do you?

15 A I don't think we discussed that.

16 Q You didn't discuss that?

17 Didn't Mr. Causey tell you that he personally
18 would have no problem flying with Karen Ulane?

19 A I don't remember that.

20 Q Didn't Mr. Causey tell you that he personally -- let
21 me back up just a minute.

22 Ms. Ulane was a 727 pilot, right, Mr. Buttion?

23 A Right.

24 Q And Mr. Causey was also a 727 pilot, wasn't he?

25 A Yes.

1 Q Ms. Ulane was a first officer and Captain Causey was
2 a captain, right?

3 A Yes.

4 Q So it was possible these two would be in the same
5 cockpit at various times over the course of their careers,
6 right?

7 A Could be, yes.

8 Q Didn't Mr. Causey tell you that he had in fact flown
9 with her on many occasions during those twelve years that
10 she flew for Eastern and had absolutely no problem with her?

11 A I don't remember that conversation.

12 Q You don't remember him telling you that even after
13 the operation, he would be happy to fly with her, do you?

14 A I am sure he didn't say that.

15 Q You are sure he didn't tell you that?

16 A To the best of my knowledge, ma'am.

17 Q It would surprise you if he said that under oath, Mr.
18 Buttion?

19 A It would surprise me, yes.

20 Q Now, Mr. Buttion, you were aware that before Ms. Ulane
21 flew for Eastern, she had flown in the Army, weren't you?

22 A I did not investigate her prior experience to Eastern.
23 I did not review her employment file.

24 Q You didn't even ask anybody about it?

25 A I had no occasion to do that, ma'am.

1 Q I am sorry. I am having trouble hearing you, Mr.
2 Buttion.

3 A I said I would have no occasion to do that.

4 Q You are saying you fired her without having occasion
5 to inquire about her past flying record, is that right?

6 A We did not fire Ms. Ulane for her flying record.

7 Q You did not fire her for her flying record; is that
8 your answer?

9 A Yes.

10 Q In fact, is it your testimony that her excellent fly-
11 ing record with Eastern has no relevance to Eastern's de-
12 cision whether to keep her in its employ or not?

13 A It has no relevance because it contained nothing in
14 there.

15 Q You never looked to see what it contained or what it
16 didn't contain, did you, Mr. Buttion?

17 A Captain Causey said there was nothing in there.

18 Q He said there was nothing negative in there, didn't he?

19 A I don't know what he said, ma'am, whether he said
20 negative or positive.

21 Q He certainly didn't tell you that it didn't contain
22 a lot of letters of commendation, did he?

23 A No, he was rather benign about it all.

24 Q He didn't tell you that Ms. Ulane had not been decor-
25 ated in Viet Nam, did he?

1 A No, he did not mention that.

2 Q He didn't tell you that she had not had an outstanding
3 history of flying before she joined the company, did he?

4 A He did not.

5 Q So I gather from your testimony that even though you
6 are the person who signed the letter firing Karen Ulane,
7 you never made any inquiry concerning her flying record
8 either with Eastern or in the Army before Viet Nam and,
9 therefore, you had absolutely no knowledge of her flying
10 in combat zones, you had no knowledge of her medals and
11 commendations from the Army, or anything of that sort; is
12 that fair to say, Mr. Buttion?

13 A I don't think the letter of termination has any con-
14 tent about flying proficiency in it, ma'am.

15 Q I realize that, Mr. Buttion, and I gather from your
16 answer that you didn't think that her 16 or so years of
17 flying history had any relevance at all to your decision
18 to terminate her; is that fair to say?

19 A We did not terminate her for flying proficiency, no,
20 ma'am.

21 Q Can we agree that Ms. Ulane had outstanding flying pro-
22 ficiency at Eastern?

23 A I don't think she had outstanding. I think she was
24 average.

25 Q What do you base that on, Mr. Buttion; if you didn't

1 look at any of the records?

2 A The best of my knowledge, in conversation with
3 Causey, he didn't indicate anything about excellent, ma'am.

4 Q Causey didn't tell you or you don't remember Captain
5 Causey telling you that he considered Ms. Ulane to be
6 better than average as a pilot for Eastern?

7 A I don't believe he mentioned that, no.

8 Q Mr. Buttion, would it change your opinion about
9 whether Ms. Ulane should be fired if you knew that Captain
10 Causey found her to be better than average as a pilot for
11 Eastern during the twelve years he was her chief officer,
12 chief pilot?

13 A As far as flying proficiency, no, ma'am.

14 Q Wouldn't change it at all?

15 A No, ma'am.

16 Q Would it change your opinion as to whether she should
17 be fired, Mr. Buttion, if you knew that Ms. Ulane had dealt
18 with numerous stressful situations in Viet Nam, had been
19 flying in combat zones, had her plane shot eight times
20 and dealt fine with the situation?

21 MR. BROWN: Your Honor, I object. I know the
22 press is here, but we are getting into the height of
23 exaggeration.

24 Now, there is no evidence in the record --

25 MS. CLAYTON: Your Honor, I will introduce

1 evidence on all these points.

2 MR. BROWN: This glorious talk of commendations
3 and ribbons and being shot at is somewhat misleading,
4 number one.

5 Number two, I object because there is no evidence
6 in the record to sustain it.

7 THE COURT: Well, I will allow it on the theory
8 it is going to be connected up, but I think the witness
9 has stated repeatedly here that any of that background
10 information would not have affected his decision on the
11 firing.

12 MS. CLAYTON: Thank you, your Honor.

13 THE COURT: And you are going to get the same
14 answer no matter what you ask.

15 MS. CLAYTON: Okay, thank you, your Honor.

16 THE COURT: I mean, he says flying proficiency
17 had nothing to do with the decision that was made.

18 BY MS. CLAYTON:

19 Q Let me just ask you one other question.

20 Captain Buttion, I gather you also had no know-
21 ledge that Ms. Ulane had been a flight instructor for
22 Eastern and in fact instructed second officers; is that
23 fair to say?

24 A She might have. I don't recollect that.

25 Q Mr. Buttion, Eastern does have procedures for ter-

1 minating pilots under certain circumstances, doesn't it?

2 A Yes.

3 Q The manner of termination is governed by the contract
4 between Eastern Airlines and the Air Line Pilots Associa-
5 tion, isn't it?

6 A There is an appeal provision in the contract for
7 terminations, yes.

8 Q The contract governs the termination procedure in
9 the first place, doesn't it, Mr. Buttion?

10 A It tells it has to be in written form and specific
11 charges, yes.

12 Q I would like you to take a look at what has been
13 marked as Plaintiff's Exhibit Number 58.

14 May I approach the witness, your Honor?

15 THE COURT: Yes.

16 BY MS. CLAYTON:

17 Q Would you take a look at this, Mr. Buttion, and tell
18 me if you can identify that as the contract between
19 Eastern Airlines and the Air Line Pilots Association?

20 A This appears to be.

21 MS. CLAYTON: I would move Plaintiff's Exhibit
22 No. 58 into evidence, your Honor.

23 THE COURT: Any objection?

24 MR. BROWN: Your Honor, I have no objection to
25 the actual contract being admitted. I would have objection

1 to contract interpretation issues being litigated in this
2 form.

3 THE COURT: Well, we will reach that question if
4 we get to it.

5 MR. BROWN: Yes.

6 THE COURT: I will receive the exhibit.

7 (Plaintiff's Exhibit 58 was received in evidence.)

8 BY MS. CLAYTON:

9 Q Just to clarify, Mr. Buttion, do you agree with me
10 that the contract governs the termination procedure?

11 A It has a procedure in there of discipline, yes.

12 Q Well, if a pilot is being fired because of disci-
13 plinary reasons, we agree that the contract governs.

14 Are you telling me that there are situations not
15 involving discipline where a pilot can be fired and we
16 don't have to look at the contract?

17 A There is an appeal procedure in there for any action
18 Eastern takes against a pilot, yes.

19 Q Mr. Buttion, isn't it a fact that that contract governs
20 all the termination procedures at Eastern?

21 A It governs the discipline and the appeal procedures,
22 yes, ma'am.

23 Q And the termination procedure, isn't that right?

24 A You have to explain what you mean by that.

25 Q Eastern is bound by the contract when it terminates

1 its pilots, isn't that right, Mr. Buttion?

2 A It is a two-way document, ma'am, yes.

3 Q So your answer is yes?

4 A Yes.

5 Q Mr. Buttion, that same contract that we identified
6 as Plaintiff's Exhibit 58 was in effect in April, 1981,
7 wasn't it?

8 A If that is the proper document for that period, yes.

9 Q Would you like to examine it so we can be sure?

10 A If you have a Section 43, "Duration," ...

11 Yes.

12 Q Captain Buttion, some time in late 1979 or early 1980,
13 Captain Frank Causey told you that First Officer Ulane was
14 contemplating undergoing an operation for gender dysphoria,
15 isn't that right?

16 A Was contemplating an operation, yes.

17 Q He told you that the nature of it was sex change
18 or transsexuality or gender dysphoria, something along
19 that line, didn't he?

20 A He just told me that Ulane was contemplating having
21 an operation for sex change, yes.

22 Q Captain Causey told you that Ms. Ulane had taken
23 sick leave to get ready for that procedure, isn't that
24 right?

25 A Captain Causey advised me that Ulane was on sick

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1 leave. The initial why she had taken sick leave, we were
2 unaware.

3 Q But at this point, some time in late '79 or early
4 1980, you became aware that she was contemplating the
5 surgery, is that right?

6 A Yes.

7 Q At that point, I think we established earlier, all
8 you knew about gender dysphoria or transsexualism was what
9 you had read in the Baltimore Sun, right?

10 A Yes.

11 Q I would like you to take a look at a document we have
12 marked as Plaintiff's Exhibit 27.

13 That is a multi-page exhibit, Mr. Buttion, and
14 I would like to really direct your attention to the
15 third sheet in this exhibit.

16 Now looking at the third sheet of Exhibit 27,
17 Mr. Buttion, can you tell me if that is the article that
18 you had read in the Baltimore Sun which we talked about
19 a little earlier?

20 A It appears to be, yes.

21 Q So at the time that you became aware that Ms. Ulane
22 was contemplating surgery, this was the only information
23 you had on the procedure, right?

24 A Yes.

25 Q You were surprised and amazed when Captain Causey told

1 you about Ulane thinking of undergoing this procedure,
2 weren't you?

3 A Correct.

4 Q This was actually well before she had actually under-
5 gone the surgery, isn't it?

6 A Time frame wise, yes, probably a couple of months.

7 Q At this time you didn't suggest that someone should
8 speak to Ms. Ulane and tell her that if the surgery went
9 ahead, her job might be in jeopardy, did you?

10 A I think that was premature to say that.

11 Q And you didn't do that, did you?

12 A No.

13 Q In fact, nobody at Eastern ever suggested that, did
14 they?

15 A No one at Eastern, who are you speaking of?

16 Q Let me rephrase my question.

17 Before Ms. Ulane had the surgery, nobody in the
18 management of Eastern suggested that someone should speak
19 to First Officer Ulane and tell her that if indeed she
20 went through with the surgery, she might get fired; is
21 that fair to say?

22 A I think she was under advisement by ALPA but not by
23 the company, no.

24 Q You are saying she was under advisement by ALPA,
25 which is her union, right?

1 A Correct.

2 Q You think she was advised by the union as to what,
3 Mr. Buttion?

4 A Well, any discussion as it may relate to the sex
5 change operation and what effect it may have in the
6 future.

7 I don't really know. That is speculation on
8 my part.

9 Q Are you telling us that you assumed that -- you
10 weren't a party to any conversation between Ms. Ulane
11 and her union representative, were you?

12 A That is correct.

13 Q Are you telling us that you assumed the union would
14 inform her that she might get fired if she went through
15 the surgery?

16 A I didn't say that, ma'am.

17 Q What did you mean then when you said you thought it
18 would be ALPA, not the company?

19 A I think I was aware of the conversation she had had
20 with some ALPA people.

21 Q Were you aware that the ALPA people had told her that
22 Eastern would fire her if she went through the surgery?

23 A I don't have any knowledge of that, ma'am.

24 Q You certainly never told anyone at ALPA to advise
25 Ms. Ulane to that effect, did you?

1 A I think that would be premature.

2 Q So it is correct to say then that nobody at Eastern,
3 to the best of your knowledge, ever suggested that if she
4 went through with this, she might get fired?

5 A Directly, no.

6 Q Indirectly?

7 A There may be inferences. I don't know.

8 Q But you only have inferences; you have no knowledge
9 about that, right, Mr. Buttion?

10 A I don't know. Captain Causey could testify to her
11 conversations with him.

12 Q Mr. Causey will be in later.

13 Before the operation, the only conversation you
14 had concerning whether Ms. Ulane would remain in Eastern's
15 employment was the conversation you had with Captain
16 Causey, in which you told him that if the surgery did
17 in fact go forward, Eastern would have to evaluate her
18 employment, isn't that right, Mr. Buttion?

19 A It would be reasonable, yes, ma'am.

20 Q I am sorry. I didn't hear your answer.

21 A I said that would be reasonable, yes, ma'am.

22 Q In fact, that was the conversation you had with Mr.
23 Causey?

24 A Correct.

25 Q But you didn't tell that to Ulane, did you?

1 A I did not speak with Ulane.

2 Q And you didn't ask Captain Causey to speak to Ulane
3 to that effect, did you?

4 A I have no recollection of that.

5 Q Mr. Buttion, I guess it is fair to say that nobody
6 at Eastern ever suggested that Eastern would prefer Ms.
7 Ulane going through psychotherapy instead of surgery to
8 deal with her gender dysphoria, is that right?

9 MR. BROWN: Your Honor, I object to the form of
10 the question. Also that assumes that this man knows what
11 Ulane's psychiatric problems were at that time and what
12 they --

13 THE COURT: Well, I think the question is a
14 little bit rhetorical, so I will sustain the objection.

15 BY MS. CLAYTON:

16 Q Captain Buttion, in April, 1980 Karen Ulane had the
17 surgery. Shortly after that you were aware that she had
18 recovered from the operation and asked to be put back
19 to work, isn't that right?

20 A Shortly after that?

21 Q Yes, about a month after that.

22 A I am afraid I don't recollect that.

23 Q When did you first become aware that she wanted to
24 come back to work after the surgery?

25 A Probably late summer of '80.

1 Q Well, let's talk about the summer of '80 then.

2 By that time you were aware that her FAA medi-
3 cal certificate had not yet been re-issued by the FAA,
4 is that right?

5 A We had heard rumors that she was applying for it,
6 yes, ma'am.

7 Q You knew she had applied, but you had not been in-
8 formed that it had been re-issued, right?

9 A That is correct.

10 Q In fact, in about August 1980 you and Dr. Millett --
11 Dr. Millett is in Eastern's medical department, isn't he?

12 A That is correct.

13 Q He and Dr. Hutson, in fact, are the only doctors on
14 the staff of the medical department, right?

15 A They are the two permanent full-time doctors. There
16 are many other doctors, ma'am.

17 Q In about August, 1980, you and Dr. Millett personally
18 went to see the FAA, didn't you?

19 A We visited the FAA in Washington, yes.

20 Q You were on vacation at that time in Virginia, I
21 believe, weren't you?

22 A Maryland.

23 Q You made about a two-hour drive from your vacation
24 home to where the FAA's offices are?

25 A Correct.

1 Q You drove over to Washington on your vacation, met
2 Dr. Millett there, and paid a call on the FAA, didn't you?

3 A Correct.

4 Q The purpose of that call on the FAA was to discuss
5 Ms. Ulane's first class medical certificate, right?

6 A No, we basically went there to understand what the
7 FAA's position was on sex change pilots and was there anyone
8 in the past involved in a sex change that they may have
9 approved or disapproved and what the real basis of the
10 total situation might be.

11 We just wanted to better understand where they
12 were coming from.

13 Q You knew that at that time the FAA had pending before
14 it Ms. Ulane's application for a reissuance of her medical
15 certificate, didn't you?

16 A I think I testified we had heard rumors. We weren't
17 sure where it was. We really didn't know.

18 Q You assumed that they were in the process of process-
19 ing her application; is that fair to say?

20 A We had heard that she had filed to have her medical
21 considered, but we had no facts of that.

22 Q Did you go to see the FAA for the purpose of helping
23 her get her FAA medical certificate issued?

24 A We went to the FAA, ma'am, as I answered before,
25 to better understand what the total situation is and were

1 there any pilots previously who they had certified or not
2 certified for this condition.

3 THE COURT: Help me with the background here.

4 Is it the rule that if a pilot goes on sick
5 leave, then in order to come back to work the pilot has
6 to be re-certified by the FAA?

7 THE WITNESS: Only if the first class medical
8 certificate is rescinded or not in force, your Honor.

9 THE COURT: What was the situation here as far
10 as the certificate was concerned?

11 THE WITNESS: The best of my knowledge, she had
12 no first-class medical at that time. She had to have it
13 re-issued by the FAA.

14 THE COURT: What had caused it to lapse in the
15 first place?

16 THE WITNESS: It lapsed by time and then also
17 by the medical condition that she was experiencing.

18 MR. DICKIE: Your Honor, I have to say that is
19 not true.

20 All medical certificates--

21 THE COURT: Do the parties agree on what the
22 fact is?

23 MR. DICKIE: It lapses by time. Every first-
24 class certificate is a six-month certificate. It cannot
25 re-issue as a first-class unless there is a medical

1 examination.

2 If you have a first-class certificate and you
3 have no medical examination in the six-month period, it
4 lapses to a second-class certificate and then it lapses
5 to a third-class certificate.

6 Eastern by contract has a first-class certifi-
7 cate requirement. Ms. Ulane's being out of work for in
8 excess of a year, not flying, we will show, indicates that
9 her certificate lapsed, and to go back to work, she would have
10 to have a valid first-class certificate, which would require
11 a medical examination, certification of a first-class.

12 The evidence will show that she re-applied for
13 that first class medical certificate in June of 1980.

14 THE COURT: All right, Mr. Brown, do you agree
15 generally with that?

16 MR. BROWN: Captain Buttion?

17 THE WITNESS: Your Honor, there is one other
18 area that causes it to lapse also, and that is is there
19 a medical change in the condition of the pilot?

20 Then it shall be reported, and it would lapse
21 by its own weight of that particular medical situation.

22 MR. DICKIE: Only if it were a disqualifying
23 condition.

24 THE COURT: Well--

25 MR. DICKIE: We will get into the certificate

1 entirely.

2 THE COURT: All right, I think I have heard
3 enough to give me a general grasp of it.

4 BY MS. CLAYTON:

5 Q I would like to back up and ask just a couple more ques-
6 tions, though.

7 It is a fact, isn't it, Mr. Buttion, that captains
8 and first officers for Eastern must renew their first class
9 medical certificate every six months if they want to keep
10 it in effect as a first class certificate?

11 A That is correct.

12 Q That is true for every pilot flying for Eastern,
13 right?

14 A Correct.

15 Q In order to do that, they have to go and get a medical
16 examination every six months, right?

17 A That is correct.

18 Q At that time if the FAA's medical examiner determines
19 that there is some problem or that it ought to be investi-
20 gated further, there might be a period where they don't
21 have a first-class medical certificate, right?

22 A If the AME fails to issue it, yes, they would be in
23 a condition of not having it.

24 Q That is the case for every pilot that flies for Eastern?

25 A Any pilot who has a medical condition that would cause

1 it not to be issued, yes, ma'am.

2 Q Mr. Buttion, going back to your visit with the
3 FAA, you were aware at that time that Ms. Ulane's medical
4 certificate had lapsed, right, and that the FAA was in
5 the process of -- or you had heard rumors that they were
6 in the process of reviewing it?

7 A We had heard rumors that she was applying for re-
8 issuance of her first-class medical, yes.

9 Q You went to the FAA and attempted to meet with
10 their psychiatrist, Dr. Pakull, is that right?

11 A Dr. Pakull, yes.

12 Q Dr. Millett had set up that meeting?

13 A Yes.

14 Q In fact, Dr. Pakull wasn't available at that time
15 and you ended up meeting with the Federal Air Surgeon,
16 Dr. H. L. Reighard, isn't that right?

17 A That is correct.

18 Q During the course of that meeting, another one of
19 the FAA's doctors met with you. I believe that was Dr.
20 Hark, is that right?

21 A Dr. Hark came into the meeting later, yes.

22 Q This was the meeting in August of 1980, is that true?

23 A Correct.

24 Q During the course of this meeting, you wanted to bring
25 to the FAA's attention all the information that you had

1 about gender dysphoria, isn't that right?

2 A I don't think that is correct.

3 Q You wanted to make sure the FAA did a thorough job of
4 issuing Ms. Ulane's medical certificate, didn't you?

5 A I don't believe that is correct.

6 Q Mr. Buttion, isn't it a fact that during the course
7 of this meeting with Dr. Reighard, the Federal Air Sur-
8 geon, you and Dr. Millett told him about the Johns Hopkins
9 program and how a doctor there had said that surgery did
10 not cure gender dysphoria?

11 A That was part of the total conversation. Very
12 little time was spent on that.

13 Q That was one of the things that you came to tell
14 Dr. Reighard, isn't it?

15 A Ma'am, we went to Dr. Pakull's to talk to him initially.
16 Our appointment was not with Dr. Reighard.

17 Dr. Reighard approached us, told us Dr. Pakull was
18 not there, please come in his office and we would sit down
19 and talk.

20 We talked for a short period of time. We basic-
21 ally asked him what the situation was as it related to
22 sex change, what the FAA's outlook was on that, was there
23 any other pilot that he had certified under this procedure,
24 and that we had one. We didn't know where it was, and we
25 had heard rumors that he was applying for his first class

1 medical.

2 I also asked Dr. Reighard in this conversation
3 of whether he considered safety and the cockpit environ-
4 ment as part of the issuance of this medical certificate,
5 and he told me that was an interesting point, but no, they,
6 the doctors, did not consider safety in the issuance of
7 a first class medical and that they were only going to
8 make a medical decision.

9 Q Mr. Buttion, Dr. Reighard is Dr. Pakull's supervisor,
10 right, and he is the head of the FAA medical certification
11 procedure, isn't he?

12 A He is the chief Federal Air Surgeon, yes.

13 Q He told you, didn't he, during the course of this
14 conversation that he was aware of the information you
15 were bringing to his attention about the Johns Hopkins
16 gender dysphoria program, didn't he?

17 A No, I think he told us that he would look into it
18 after we brought it to his attention.

19 Q Mr. Buttion, you recall the deposition that you gave
20 in Florida in October 1982 in the conference room just
21 outside your office?

22 A Correct.

23 Q I would like to direct your attention to page 152,
24 lines 11 through 153, line 6.

25 Let me ask you if you were asked these questions

1 and you gave these answers:

2 "Q You told him, and when I say 'him,' you
3 told Dr. Reighard, you and Dr. Millett, that
4 Johns Hopkins had discontinued the surgery, isn't
5 that a fact?

6 "A Dr. Millett made him aware that Johns Hop-
7 kins had discontinued the operation.

8 "Q Dr. Millett in your presence, with Dr. Reig-
9 hard, advised the FAA that Johns Hopkins had
10 concluded that surgery was not successful, isn't
11 that a fact?

12 "A Well, I can't speak for Hopkins. The only
13 thing that we can speak for is what our opinion
14 might have been.

15 "Q My question specifically was whether you and
16 Dr. Millett stated, in words or substance, to the
17 FAA and Dr. Reighard at the meeting in August,
18 1980, that Johns Hopkins had discontinued the
19 surgery because Hopkins had concluded that it was
20 unsuccessful?

21 "A We asked Dr. Reighard was he aware of that
22 position that Johns Hopkins Hospital had taken.

23 "Q Did you tell Dr. Reighard or ask him if he
24 was aware of the position of other institutions
25 and hospitals in the United States had taken on

1 the same subject?

2 "A We did not get into a lengthy conversation
3 on that."

4 Do you recall those questions and answers?

5 A. Yes, ma'am.

6 MR. BROWN: That doesn't appear in my transcript,
7 counsel.

8 He says, "We did not get into a lengthy conver-
9 sation," period.

10 MS. CLAYTON: Okay, I would like to go back, Mr.
11 Brown, to the questions and answers just preceding this.
12 I need this by way of background.

13 BY MS. CLAYTON:

14 Q Now I would like to direct your attention to page 152,
15 lines 1 through 10:

16 "BY MR. DICKIE: Q Now, did you provide Dr.
17 Reighard, did you not, with information concern-
18 ing the Johns Hopkins position on the sex change
19 surgery, didn't you?

20 "A How do you mean provided? What do you mean?

21 "Q Well, you informed him, did you not, of the
22 position of Johns Hopkins?

23 "A We raised the question of Hopkins, and he was
24 aware of it. That's all."

25 MR. BROWN: No --

1 BY MS. CLAYTON:

2 Q Wasn't that your answer?

3 MR. BROWN: Your Honor, I object.

4 MS. CLAYTON: Mr. Brown, this is not the grievance
5 hearing. This is the deposition of Mr. Buttion, given on
6 October 14, 1982, on page 152.

7 THE COURT: Well, just take a minute and look at
8 each others' copies there.

9 (Brief discussion off the record.)

10 THE COURT: All right, back on the record.

11 BY MS. CLAYTON:

12 Q Mr. Buttion, at the time you spoke with Dr. Reighard
13 at the FAA, Mr. Borman was aware that you were going to make
14 this visit, wasn't he?

15 A I can't say for certain he was. My recollection
16 is I don't think he was aware until after we were there.

17 Q Dr. Millett specifically informed him after you re-
18 turned that you and Dr. Millett had gone to the FAA,
19 didn't he?

20 A I think Dr. Millett may have. I can't say specif-
21 ically. I think I have testified I think so before.

22 Q Captain Buttion, this is the only time that you had
23 personally ever paid a visit to the FAA with regard to the
24 medical certificate of a pilot for Eastern, isn't it?

25 A First time in person, but we had written Dr. Reighard

1 before about certain procedures.

2 Q Now, Mr. Buttion, I would like to go back to the point
3 where you became aware that Ulane's FAA certificate had not
4 yet been re-issued and she had applied to go back to work.
5 I think you said that to the best of your recollection it
6 was around the end of the summer.

7 It would be fair to say that would have been
8 around August 1980 at the latest, right?

9 THE WITNESS: Read that over again, please, ma'am?

10 BY MS. CLAYTON:

11 Q Let me rephrase the question.

12 A All right.

13 Q You certainly were aware that Ms. Ulane wanted to
14 return to work for Eastern by August 1980, isn't that
15 right?

16 THE COURT: It is a little bit confusing. You
17 mean he was aware by August of 1980 that she wanted to
18 return to work?

19 MS. CLAYTON: Right.

20 BY MS. CLAYTON:

21 Q Were you aware of that by 1980, in August, Mr. Buttion?

22 A I don't know if it was August or later on in '80, but
23 anyway, probably the latter quarter of 1980, yes.

24 Q At this point she was still on her sick leave, wasn't
25 she, Mr. Buttion?

1 A I think so, or in the later stages of the leave, yes.

2 Q Eastern's contract with the Pilots' Association pro-
3 vides that if a pilot has sick leave accumulated, they can
4 take their sick leave and they don't have to inform Eastern
5 even why they are taking it, isn't that right?

6 A Initially, no.

7 Q You had become aware of her purpose for the sick
8 leave some time around the end of 1979 or early 1980?

9 A We were understanding of the possible reason why she
10 was on it, that she was contemplating a sex change opera-
11 tion some time in the future.

12 Q In about October of 1980, many months after the sur-
13 gery, that was the time her sick leave finally ran out,
14 isn't that right?

15 A I would have to check the record. I thought it was
16 September, but it may be October.

17 Q Well, some time, let's say, September or October,
18 Ms. Ulane asked to be put on an extended medical leave
19 under your contract, isn't that right?

20 A She asked to be put on extended medical leave, yes,
21 after the sick leave pay ran out.

22 Q The provision for extended medical leave under the
23 contract is Section 24(b), isn't that right, Mr. Buttion?

24 A Section 24, leave of absences, yes.

25 Q I have marked as Plaintiff's Exhibit 85 that portion

1 of the contract, Mr. Buttion. I would like you to take
2 a look at it.

3 Can you tell me if Plaintiff's Exhibit 85 is a
4 copy of that section of the contract that provides for
5 medical leave?

6 MR. BROWN: Your Honor, we would object to this.
7 Section 24 goes on for about four pages. There are some
8 rather relevant portions of it.

9 The contract as a whole is marked as an exhibit
10 already. That is Plaintiff's Exhibit 58.

11 MS. CLAYTON: I have just done this for purposes
12 of ease, your Honor, since I don't have copies of the en-
13 tire contract, and if Mr. Brown would like to bring in
14 additional pages, that is certainly fine with me.

15 THE COURT: What is the relevance of these con-
16 tract provisions about leave?

17 MS. CLAYTON: The relevance at this point is,
18 your Honor, Ms. Ulane came off sick leave and asked for
19 extended medical leave at a time when she had not yet been
20 certified by the FAA.

21 Under the contract if Eastern felt she had a
22 medical problem, they were obligated to put her on
23 medical leave. They didn't, and in fact they determined
24 that she had no medical problem at that time.

25 THE COURT: All right, proceed.

1 As far as other parts that may be relevant,
2 Mr. Brown can go into those on cross examination.

3 MR. BROWN: Yes, sir.

4 BY MS. CLAYTON:

5 Q Now, Mr. Buttion, can you identify this exhibit that
6 I have marked as Plaintiff's Exhibit 85 as the provision
7 from the contract, or I should say a partial provision of
8 the contract, that deals with medical leave?

9 A Well, it has no date on it to say that it came out
10 of the exhibit you gave me.

11 I would only have to assume, without checking it
12 word for word, it is the same.

13 Q Mr. Buttion, you have the contract, which is Exhibit
14 58, in front of you. Would you please compare them?

15 THE COURT: Well, here, let's not spend any
16 time on this.

17 I accept the representation of counsel that
18 it is a Xerox copy, and we can proceed on that basis.

19 BY MS. CLAYTON:

20 Q Mr. Buttion, it says here in Section 24(b)(1), "When
21 leaves are granted on account of sickness or injury,
22 a pilot shall retain and continue to accrue his seniority
23 whether or not he is able to maintain his airline pilot's
24 certificate or certificates required for his status until
25 he is able to return to duty or is found to be unfit for

EXHIBIT 85
COTTON CONTENT

1 such duty," and then it goes on to say, "except for not
2 longer than seven years," is that right?

3 A That is what it says, ma'am.

4 Q This is the provision under which Ms. Ulane asked
5 to receive medical leave, isn't that right, Mr. Buttion?

6 A Yes.

7 Q The reason was that even though she wanted to return
8 to work, she had as of that point in time been unable to
9 obtain her first class medical certificate from the FAA,
10 right?

11 A This says for sickness or injury, and she was neither
12 sick nor injured at that point in time. She was unable to
13 obtain a first-class medical.

14 Q Precisely, Mr. Buttion.

15 A So she was put on administrative leave, ma'am.

16 Q So Eastern in fact said, "Ms. Ulane, you are not sick
17 or injured. You have no medical problem and you are not
18 entitled to the leave provisions of this contract between
19 the Air Line Pilots Association and Eastern," isn't that
20 right?

21 THE WITNESS: Read that again, ma'am. It is
22 a multiple question.

23 MS. CLAYTON: Would the court reporter please
24 read the question back?

25 (Question read by the reporter)

1 BY THE WITNESS:

2 A We stated she was neither sick nor injured, and she
3 was awaiting a first-class medical for other reasons.

4 BY MS. CLAYTON:

5 Q What were those other reasons, Mr. Buttion?

6 A She had to go through the procedures specified by
7 the FAA that we had no knowledge of.

8 Q That procedure was the FAA's investigation of whether
9 she was medically fit to return to flight duty, isn't that
10 right, Mr. Buttion?

11 A I can't attest to that, ma'am, no.

12 Q You had been to the FAA by that time, along with
13 Dr. Millett, hadn't you, Mr. Buttion?

14 A Yes.

15 Q You were aware that Dr. Reighard was making an invest-
16 igation, weren't you, Mr. Buttion?

17 A Ma'am, we went there to ask where it was and what he
18 was doing. We did not get that information, other than to
19 say that he was going to make a medical determination.

20 When and where that was, we had no knowledge.

21 Q Right, you didn't know when or where it would come
22 down, but you knew that he was in the process of reviewing
23 the matter

24 You were aware of that, weren't you, Mr. Buttion?

25 A We had rumor to that effect, yes, ma'am.

1 Q Dr. Reighard didn't deny it, did he?

2 A He told us he really didn't know exactly where it was.
3 He couldn't give us that information.

4 Q He told you he couldn't talk with you specifically
5 about Ulane because it was an ongoing medical certification
6 procedure and the FAA was precluded from speaking about the
7 individual, didn't he?

8 A Ma'am, I think he told us he didn't know where it was
9 at that time.

10 Q But he did know that it was in the FAA, didn't he,
11 Mr. Buttion, and that was the whole purpose of your going
12 out to talk with him?

13 A That is not correct.

14 Q To make sure he did a thorough job, wasn't it?

15 A That is not correct.

16 Q Your purpose was to determine simply what the FAA
17 knew about transsexuals?

18 A We wanted to know any past history, what process
19 there might be, what we could look forward to as what
20 the process might be, those types of questions, ma'am.

21 Q If the FAA had told you that they had reviewed the
22 medical certificate of a great number of transsexuals
23 and had found them medically qualified to fly, you would
24 have accepted that answer as being a lot more knowledge
25 than you had on the subject, wouldn't you, Mr. Buttion?

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COTTON CONTENT

1 A It is a hypothetical, ma'am. They didn't tell us
2 that.

3 Q Well, let's go back to the point in time, Mr.
4 Buttion, where Ms. Ulane applied for medical leave.

5 Now, I would like again to direct your atten-
6 tion to Exhibit 85 and tell me this phrase, "...whether
7 or not he is able to maintain his air line pilot certi-
8 ficate or certificates required for his status," that
9 refers to the first class medical certificate issued by
10 the FAA, doesn't it?

11 A Ma'am, it refers to when leaves are granted on account
12 of sickness or injury.

13 Q And it applies whether or not the pilot is able to
14 maintain their first-class medical certificate; isn't
15 that what that sentence means, Mr. Buttion?

16 A "When leaves are granted on account of sickness
17 or injury, the pilot shall retain and continue to
18 accrue his seniority whether or not he is able to
19 maintain his air line pilot certificate or certifi-
20 cates required for his status."

21 Q Maybe my question wasn't clear. I am just asking
22 what the "air line pilot certificate" means?

23 That refers to the first-class medical certi-
24 ficate, among others, perhaps, isn't that right?

25 A Well, that is the certificates required to maintain

1 his status. His pilot certificate is a piece of paper
2 that remains throughout his life. It is kept current
3 by a medical, among other things.

4 Q Mr. Buttion, doesn't 24(b)(1) mean that a pilot can
5 get medical leave even if the pilot can't get a first-
6 class medical certificate under the other appropriate
7 circumstances?

8 A Under the appropriate circumstances, ma'am.

9 Q I think we have established that at this point in
10 time when Ms. Ulane asked to be placed on extended medi-
11 cal leave under this contract, she did not yet have a
12 first-class medical certificate, and I believe you told
13 me Eastern determined that she had no sickness or injury
14 and, therefore, she was not entitled to medical leave,
15 is that right?

16 A Not under the terms of the agreement. Self-
17 inflicted is not under the terms of the agreement.

18 Q You felt that Ms. Ulane's medical condition was
19 self-inflicted, right?

20 A It was a voluntary thing, yes, ma'am.

21 Q It was a voluntary thing that she had gender dys-
22 phoria?

23 A It was a voluntary thing that she had the operation,
24 ma'am, yes.

25 Q The operation was voluntary and, therefore, she had no

1 medical condition that would entitle her to medical
2 leave, right?

3 A As the agreement contemplated, no, ma'am.

4 Q Mr. Buttion, you told us earlier that you have
5 absolutely no medical training and you have no knowledge
6 of gender dysphoria, right?

7 A That is correct.

8 Q I am sure you didn't make this decision about whether
9 Section 24(b)(1) applied all by yourself, did you?

10 A Ma'am, I was a long time in the negotiation of this
11 document, if you recall, that you have introduced, and
12 I have intimate knowledge of what was behind that document.

13 Q I understand you have knowledge, but in this particular
14 instance you didn't feel that knowledge was adequate and
15 you in fact consulted with Dr. Millett of the medical
16 department to find out whether he felt medical leave
17 should apply under the circumstances, didn't you, Mr.
18 Buttion?

19 A I consulted with medical, yes, ma'am.

20 Q The individual in medical you consulted with was
21 Dr. Millett, isn't it?

22 A Yes, ma'am.

23 Q You asked him whether in his opinion Ms. Ulane was
24 entitled to the medical leave benefits of Section 24,
25 isn't that right?

1 A I don't recollect that, ma'am.

2 Q You don't recall that?

3 I would like to direct your attention to page
4 188, lines 9 through 16, of the October 1982 deposition.

5 You were asked:

6 "Q Now, will you tell me when prior to October
7 1980, Dr. Millett rendered an opinion that
8 First Officer Ulane was not entitled to the
9 medical leave benefits of Section 24?

10 "A I think that was from the first time we
11 became aware of it, we discussed whether she was
12 in fact entitled."

13 You gave that answer to that question, didn't
14 you, Mr. Buttion?

15 A I may, but I don't know if that is the context that
16 I answered it in. There may have been other lead questions
17 that got around to that, ma'am.

18 I would say that at the time the operation was
19 known, that I took the position from that point in time
20 that it was self-inflicted and that under the agreement,
21 self-inflicted is not covered and that I would continue
22 that pay, that leave pay, as a humanitarian purpose be-
23 cause I did not want to add to her already difficult
24 problems.

25 Q The leave pay you are talking about is the sick leave

1 that she was entitled to regardless of whether she had told
2 you her condition or not, right?

3 A That is the method of payment, yes, ma'am, for the
4 period of time.

5 Q At the time Ms. Ulane asked for medical leave, which
6 would have given her certain benefits under Section 24(b),
7 you denied her that leave, didn't you, Mr. Buttion?

8 A Denied it based on the fact it was self-inflicted,
9 and we took that position from the start, ma'am.

10 Q You and Dr. Millett took the position that there was
11 no medical reason that disqualified Karen Ulane from re-
12 turning to flight status, didn't you?

13 A It was a self-inflicted operation. It was not
14 covered under the contract.

15 Q Do you have some problem answering my question, Mr.
16 Buttion?

17 A No.

18 MS. CLAYTON: Will the court reporter please
19 read it back?

20 (Question read by the reporter.)

21 BY THE WITNESS:

22 A I believe I answered that, didn't I?

23 BY MS. CLAYTON:

24 Q Isn't that right?
25

1 THE COURT: Well, there could be a self-inflicted
2 medical reason, and I think the question is did you regard
3 it as a medical reason, whether or not it was self-
4 inflicted, or did you regard it as a non-medical reason?

5 THE WITNESS: Well, your Honor, we considered
6 that it was a voluntary operation that need not have
7 taken place and, therefore, it was self-inflicted under
8 those terms.

9 THE COURT: Well, does the contract refer here
10 to self-inflicted?

11 THE WITNESS: It has an exclusion in the dis-
12 ability section of the agreement, yes, sir.

13 THE COURT: All right, maybe we could look at
14 that, and that would be helpful.

15 BY MS. CLAYTON:

16 Q The exclusion you are talking about, Mr. Buttion, is
17 simply that certain cosmetic surgery is excluded from pay-
18 ment of the medical expenses, isn't that right, Mr.
19 Buttion?

20 A No, I think it gets more involved than that. I
21 would have to look at it or look at the employee benefits
22 book.

23 MR. BROWN: I have it here, if you would like to
24 look at it.

25 This is the document, I believe, that you are
referring to.

1 BY MS. CLAYTON:

2 Q Mr. Brown has handed me the Pilot Employee Benefits
3 Handbook. That is the one you are talking about, Mr.
4 Buttion, isn't it?

5 A That would contain the general guidelines. There is
6 an all-inclusive document that stands behind that book.

7 Q This document simply talks about when your group
8 medical insurance plan will pay for certain medical pro-
9 cedures, isn't that right?

10 Would you like to examine it?

11 A I would have to, yes.

12 Q This book doesn't talk about leave of absence,
13 medical leave or sick leave, with Eastern Airlines, does
14 it, Mr. Buttion?

15 (Brief interruption)

16 BY THE WITNESS:

17 A It excludes expenses for transsexual surgery.

18 BY MS. CLAYTON:

19 Q That is right, Mr. Buttion, and that is talking
20 about the reimbursement of medical expenses. It doesn't
21 have anything to do with medical leave from work, does it?

22 A Then there is another section of the disability sec-
23 tion of the agreement that prohibits pay for self-inflicted.

24 Q Mr. Buttion, I am not talking about pay. I am talking
25 about medical leave, the kind of leave that is granted on

1 account of sickness or injury when a pilot can't maintain
2 certain certificates, or even if they can, which gives the
3 pilot certain benefits, including seniority, for a period
4 of seven years.

5 Section 24(b)(1) of the contract, that is the
6 provision I am talking about right now. Can you tell me
7 if there is anything in that section that excludes self-
8 inflicted?

9 A Ma'am, if a portion of the agreement prohibits pay
10 under the sick leave provision for self-inflicted, it
11 would also prohibit leave for such a thing. It is in-
12 clusive.

13 Q You are telling me that the Pilot Employee Handbook
14 prohibits leave, prohibits the company from giving leave
15 for cosmetic conditions?

16 A There is a section in the document that you have
17 given us, 58, that may or may not be included in this,
18 that covers disability pay, et cetera, for self-inflicted,
19 not giving for self-inflicted.

20 Q Mr. Buttion, I am not talking about disability pay.
21 I am talking about medical leave.

22 Can you tell me any provision of the contract
23 you have in front of you, Exhibit 58, or the Pilot
24 Employee Benefit Handbook that Mr. Brown handed you or
25 any other document you are aware of that says that medical

1 leave will not be given when the condition involved some
2 element of self-infliction or voluntary or any of those
3 other terms you just used?

4 A I think that you have to look deeper than what you
5 are trying to look. Is there any other exclusions in the
6 agreement that speak to self-inflicted or denial of pay or
7 whatever as a result of self-inflicted, and there are
8 other portions of the agreement because the agreement
9 stands in total, not on any one word.

10 THE COURT: I am going to interpret the answer
11 to cut this off. We will be here until Christmas.

12 I am going to interpret his answer as meaning
13 that in the handbook there is some reference to not re-
14 ceiving benefits for self-inflicted occurrences and that
15 he interprets that to mean that you don't get leave either.

16 MS. CLAYTON: Okay, I guess I ought to mark this
17 as an additional exhibit then.

18 THE COURT: Further he interprets this surgery
19 that the plaintiff had as being a self-inflicted thing.

20 Now, whether he regards it as medical or non-
21 medical, we still don't know, but let's not waste any more
22 time with it.

23 MS. CLAYTON: Okay, I would like to mark as our
24 next exhibit the page that Mr. Buttion was just referring
25 to, pages 810 and 811 out of the Pilot Employee Benefits

1 Handbook, which I will mark as Plaintiff's Exhibit No.88.

2 BY MS. CLAYTON:

3 Q Just to make the record clear, Mr. Buttion, I would
4 like you to identify that indeed the pages you were
5 referring to were 810 and -11 out of Plaintiff's
6 Exhibit Number 88.

7 A Yes, 810, Pilot Employee Benefits Handbook.

8 Q Mr. Buttion, did you consider Ms. Ulane's condition
9 in October 1980 to be a medical condition?

10 A Well, she had undergone surgery for sex change, and
11 I don't know how to characterize that, other than she had
12 an operation during a period of time that she wasn't
13 available for flight duty.

14 Q But you didn't consider that a medical condition,
15 did you?

16 MR. BROWN: I object to the form unless you can
17 qualify this witness as competent to answer that question.

18 THE COURT: Well, if he isn't competent, he can
19 tell us. I mean, if he felt at the time and feels now
20 that he can't answer the question, we should have that in
21 the record.

22 THE WITNESS: Your Honor, I cannot speak as to
23 October '80 as to whether she had a condition, a medical
24 condition, or not.

25 I was only aware that she had a sex change

1 operation in April of 1980. I am not qualified to answer
2 what her condition was in October of 1980.

3 BY MS. CLAYTON:

4 Q You did consult Dr. Millett in determining whether
5 benefits under Section 24(b)(1) were to be given, didn't
6 you, and Dr. Millett is in your medical department?

7 A What time frame, ma'am? Are you saying October, 1980?

8 Q I am talking about the approximate time when Ms.
9 Ulane applied for her benefits, which I will represent to
10 you was about October, 1980.

11 A That she applied for her benefits?

12 We had been giving her benefits since August of
13 '79.

14 Q I am sorry. In October 1980 Ms. Ulane applied for
15 medical leave because her sick leave had run out. She
16 applied for extended medical leave under Section 24(b).

17 Now, at that time you consulted with Dr. Millett
18 in determining whether or not she should be given medical
19 leave under that section, isn't that right?

20 A We may have had a discussion that reiterated an
21 earlier position we had taken back in 1980, early '80,
22 April '80 after the operation --

23 Q Do I under--

24 A -- that it was self-inflicted and that it didn't
25 fall under the sick leave provisions of the agreement,

1 ma'am.

2 Q So do I understand you correctly that Dr. Millett
3 and you had determined some time before this that Ms.
4 Ulane did not have a medical problem?

5 A No, that is not what I said, ma'am.

6 It didn't fall under the sick leave provisions
7 of the agreement.

8 Q I just want to know, Mr. Buttion, do you think Dr.
9 Millett is qualified to determine whether a person has
10 a medical problem?

11 A Yes.

12 Q At the time Ms. Ulane asked for medical leave, Dr.
13 Millett told you that he didn't consider she had a medical
14 problem entitling her to that leave, isn't that right?

15 A That she wasn't entitled to the sick leave.

16 Q In about January 1980 a letter was sent to Ms.
17 Ulane denying her that leave. I would like you to take
18 a look at what has been marked as Plaintiff's Exhibit
19 11 and tell me if you received a copy of that letter sent
20 by Mr. Causey to Ms. Ulane, denying her any rights to
21 medical leave under Section 24(b).

22 A I show copied on this letter, yes, ma'am.

23 Q You did receive a copy of this letter, didn't you,
24 Mr. Buttion?

25 A I would assume if I was copied, yes, ma'am.

1 Q I would like to direct your attention to the third
2 paragraph of that letter.

3 You did read it over when you got it, didn't you,
4 you, Mr. Buttion?

5 A I expect I did, yes, ma'am.

6 Q You see where it says in the third paragraph:

7 "Section 24(b) provides in part when leaves are
8 granted on account of sickness or injury."

9 A That is correct.

10 Q I would like to direct your attention to the second
11 paragraph, about the middle, where it says:

12 "This particular leave was --" referring to the
13 sick leave -- "was granted because there appeared
14 to be no continuing --"

15 I am sorry; I believe this refers to the admin-
16 istrative leave that you talked about earlier.

17 "This particular leave was granted because there
18 appeared to be no continuing medical reason for
19 your absence."

20 Do you see that, Mr. Buttion?

21 A Yes.

22 Q You and Dr. Millett had agreed with that statement,
23 hadn't you, before Mr. Causey sent this letter out?

24 A I think we agreed from the beginning, ma'am, that this
25 was self-inflicted and did not fall under the provisions

1 of the sickness and injury provision of 24(b) of the
2 agreement because of being self-inflicted and, there-
3 fore, the normal thing would be to go to an adminis-
4 trative leave after the payment of the sick leave stopped.

5 (Brief interruption)

6 MS. CLAYTON: Your Honor, I would just like to
7 move those exhibits, which we have identified, into
8 evidence.

9 THE COURT: They are all received.

10 BY MS. CLAYTON:

11 Q Now, Mr. Buttion, you said instead of putting Ms.
12 Ulane on medical leave, as she had requested, she was put
13 on something called administrative leave, right?

14 A Correct.

15 Q Mr. Buttion, can you tell me any place in the contract
16 where administrative leave is provided for?

17 A It need not be provided for, ma'am. It is silent
18 on the subject.

19 We use it.

20 Q I am sorry. I couldn't hear your answer.

21 A I said it need not be provided in the agreement. It
22 is silent on the subject.

23 Anything it is silent on, it is up to the
24 company that it may use.

25 Q So in fact administrative leave is not provided for

1 in the contract, is it?

2 A It is not a restriction in the agreement.

3 It is basically a restrictive document, ma'am.
4 Anything not restricted in there, it is the company's
5 management's right to use.

6 Q So it is your testimony then that Eastern's manage-
7 ment had the prerogative to in essence invent another kind
8 of leave for Ms. Ulane, is that right?

9 MR. BROWN: Object to the form of the question,
10 your Honor.

11 THE COURT: Overruled. It is cross examination.

12 BY THE WITNESS:

13 A I don't think there is anything invented by admin-
14 istrative leave. It goes on all the time.

15 BY MS. CLAYTON:

16 Q Mr. Buttion, before Ms. Ulane was placed on admin-
17 istrative leave, there had never been another pilot for
18 Eastern that had been placed on anything called adminis-
19 trative leave, had there?

20 A There may have been. I don't know.

21 Q You didn't know of any, did you, Mr. Buttion?

22 A I think if you would take the time to research, you
23 would find there are.

24 Q Didn't Captain Causey tell you he had never heard of
25 anyone being placed on administrative leave before?

1 A I don't particularly remember that.

2 Q Whose idea was it to put Ms. Ulane on something
3 called administrative leave?

4 A Probably collectively mine and my manager of con-
5 tract administration, my director of labor relations.

6 Q They had never heard of anyone being placed on that
7 leave before either, had they, Mr. Buttion?

8 A I think they had.

9 THE COURT: Ms. Clayton, I think we ought to
10 move on here. We could spend the rest of the day on this
11 administrative leave. Let's move on.

12 BY MS. CLAYTON:

13 Q Mr. Buttion, we established earlier you have no
14 medical knowledge and when you want a medical opinion,
15 you do go to your medical department, isn't that right?

16 A That is correct.

17 Q You always rely on the opinion of your medical depart-
18 ment, don't you?

19 A Basically, yes.

20 Q Dr. Hutson and Dr. Millett are the only full-staff
21 doctors in your medical department, right?

22 A Permanent staff, yes, ma'am.

23 Q Neither of them has a degree in psychiatry, right?

24 A I don't know if they have a degree in psychiatry,
25 ma'am.

1 Q Neither of them are psychiatrists, right?

2 A That is correct.

3 Q In fact, Eastern has no psychiatrists on its staff
4 in the medical department, isn't that right?

5 A Part-time? Maybe, yes.

6 Q Are you aware of any?

7 A We used to have one or more, but I don't know if
8 we still have some.

9 Q If you don't have a psychiatrist on the staff in
10 your department, Dr. Millett and Dr. Hutson are supposed
11 to go and consult with a full-time psychiatrist who can be
12 a consultant or retained by Eastern for special occasions
13 if they needed a psychiatric opinion, isn't that right?

14 A We use full-time psychiatrists in different situations,
15 yes, ma'am.

16 Q You do that on a fee for services type of basis, don't
17 you, Mr. Buttion?

18 A Assuming that we don't have any part-time.
19 many times we have doctors that work part-time for Eastern.
20 They get pay and other benefits from Eastern.

21 Q At the time Ms. Ulane's situation was being reviewed,
22 there was no psychiatrist, either part-time or full-time,
23 on the Eastern medical department staff, was there?

24 A I can't attest to that, ma'am. I don't know.

25 Q Do you know of any who was there?

1 A I don't know all the doctors. There are many that
2 participate on a part-time basis in our medical depart-
3 ment, ma'am.

4 Q Mr. Buttion, there is no question that the only
5 individual in the medical department that you personally
6 talked with concerning Ms. Ulane was Dr. Millett, isn't
7 that right?

8 A Correct.

9 Q You knew that Dr. Millett was not a psychiatrist?

10 A I don't think he has a degree in psychiatry, no,
11 ma'am.

12 Q To your knowledge, Dr. Hutson had absolutely no
13 involvement with the decisions made by the medical
14 department concerning Ulane, isn't that right?

15 A I don't know that.

16 Q The first time you talked to Dr. Millett about
17 Ms. Ulane, would that be about June, 1980 or would it have
18 been earlier?

19 A It probably would have been earlier than that.

20 Q Do you remember a telephone call you had with him
21 in about June 1980 when you discussed Ms. Ulane's
22 request to return to work?

23 A Ma'am, you speak of that as a fact, of June of 1980.

24 I think even in August of '80 we were not sure
25 whether in fact-- the rumor had it that she was going for

1 first class medical, so I don't think we could know in
2 June of '80 that she was returning to work.

3 Q Don't you recall her having informed Eastern that
4 she wanted to return to work and she was about to go
5 through the FAA procedures?

6 A You would have to recollect my memory on that. I
7 don't recall exactly that.

8 Q I am not really trying to pin you down to a particular
9 month, Mr. Buttion, but I just want to establish that
10 some time after the surgery and some time before your
11 trip to Washington, you had a conversation with Dr.
12 Millett about Ulane's operation and the possibility that
13 she might want to return to work, isn't that right?

14 A If and when, yes.

15 Q In this conversation, the telephone conversation
16 that you had with him about that time, I believe in your
17 deposition when you were asked, at page 124, we asked you,
18 at lines 6 through 9, "Now, subsequent to April 1980, when
19 did you have the next discussion or involvement on the
20 subject with First Officer Ulane," you answered, "Probably
21 around June of 1980."

22 Now, I am not trying to pin you down to the time,
23 but I think that was your best recollection a year ago.

24 Now, during this conversation that you had with
25 Dr. Millett on the telephone in the summer of 1980, you

1 told Dr. Millett about the article that you had seen in
2 the Baltimore Sun, didn't you?

3 A Yes.

4 Q That was the article that we identified earlier as
5 part of Plaintiff's Exhibit 27, where it talked about how
6 Hopkins had ceased to perform the surgery, isn't that right?

7 A Yes.

8 Q Dr. Millett told you that he had not heard about that
9 article, isn't that right?

10 A Yes.

11 Q He told you that he would research and try to get it,
12 right?

13 A He would look into it, yes, ma'am.

14 Q In this telephone conversation with Dr. Millett, you
15 specifically told him that the article said surgery does
16 not correct the basic problem, isn't that right?

17 A That is my memory of the article, yes, ma'am.

18 Q You told him that Hopkins had stopped doing the sur-
19 gery and was no longer performing these operations for
20 gender dysphoria, right?

21 A My memory of the article, yes, ma'am.

22 Q But you specifically asked Dr. Millett to inquire
23 about the surgery at Johns Hopkins, didn't you?

24 A I asked Dr. Millett to look into the article in
25 the Baltimore Sun that talked about the stopping of that

1 surgery at Johns Hopkins and the controversy surround-
2 ing that.

3 Q Didn't you also ask him to make inquiry at Johns
4 Hopkins?

5 A I told him to research the article and see what
6 information he could get from it.

7 Q In your deposition at page 127, lines 16 through 19:

8 "Q And you specifically directed Dr. Millett
9 to inquire with respect to the surgery at Johns
10 Hopkins, didn't you?

11 "A Yes, sir."

12 Do you remember giving that answer, Mr. Buttion?

13 A Yes.

14 Q When you directed Dr. Millett to make specific in-
15 quiry at Johns Hopkins, you were aware that that was not
16 the hospital where Ms. Ulane had had her surgery, right?

17 A I was aware that Ulane had surgery in Chicago.

18 Q Now, you didn't ask Dr. Millett to make inquiry in
19 Chicago, did you?

20 A No.

21 Q In fact, you didn't ask him to make inquiry at the
22 University of Minnesota or Stanford University or any of
23 the other institutions that were still performing the
24 surgery, did you, Mr. Buttion?

25 A No.

1 Q You knew for a fact that Ulane's surgery had not
2 been performed at Hopkins, and yet that was the only
3 place where you asked Dr. Millett to inquire, isn't
4 that right?

5 A It is also true, ma'am, the only place I knew that
6 surgery had taken place was Chicago. I know nothing of
7 Stanford. I know nothing of Minnesota.

8 Q But you didn't ask him to make any inquiry in
9 Chicago, did you?

10 A No.

11 THE COURT: Ms. Clayton, I think we will break
12 for lunch now and resume at 2:15.

13 (The trial was recessed until 2:15 p.m. of the
14 same day.)
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20

21 I certify that the foregoing is a correct partial transcript
22 of the record of proceedings in the above-entitled matter.

23 Laura M. Brennan
24 Laura M. Brennan
25 Court Reporter

4-5-80

Date

