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## Virgin America Flight Attendants Win \$77M In Wage Suit

By **Dave Simpson**

Law360 (January 16, 2019, 6:47 PM EST) -- A California federal judge awarded \$77 million to a class of flight attendants Wednesday after earlier finding that Virgin America Inc. failed to pay for hours worked and shorted their overtime pay, reducing the workers' requested payout by \$8 million.

U.S. District Judge Jon S. Tigar largely agreed with the workers and adopted their damages model, but he allowed a 25 percent reduction in Private Attorney General Act penalties based on claims by the airline that it made a good-faith attempt to comply with applicable wage-and-hour laws.

Virgin challenged the workers' damages model, claiming that it failed to take into account that workers are sometimes late to work, but Judge Tigar found that it would not make sense to shift the burden onto employees to produce proof that they were on time when Virgin decided not to keep the records.

"Virgin's assumption that employees were sometimes late is a logical inference based on common experience," he said. "But Virgin provides no reason to think the occasional late employee completely undermines plaintiffs' damages model, particularly since it was Virgin's decision not to require employees to record their precise arrival times."

In November 2016, Judge Tigar **certified a class** that included California-based flight attendants who worked for the airline on or after March 18, 2011. His order also certified a California resident subclass and a "waiting time penalties" subclass for individuals who have left the job since March 18, 2012.

Judge Tigar had **rejected Virgin's previous attempt** to dodge most of the suit with a summary judgment bid, ruling in January 2017 that California labor law applied to all work that happened in California and in situations where employment policies were decided from Virgin's then-headquarters in the Golden State. Virgin has since been bought by Alaska Airlines, which is based in Seattle.

In July, Judge Tigar largely held that his previous rulings in the case and the weight of evidence provided by workers **entitled the flight attendants to summary judgment**.

The judge's orders indicated that future proceedings, either by the court or by a jury, would determine damages based on the flight attendants' regular rate of pay.

In October, the class **asked for an \$85 million payout**, with the largest chunk coming from damages, restitution and interest for Virgin's failure to pay for hours worked, which totals more than \$18 million for the class and an additional \$18 million for a California subclass.

In November, Virgin asked the judge to **slash at least \$25 million** from the proposal, calling the amount "excessive and punitive."

The airline asserted in its opposition filing that the case has covered a lot of uncharted territory because of the unique legal questions posed by the airline industry's daily interstate operations — much of which Virgin America said is vulnerable to reversal on appeal.

It asked that the PAGA penalties be removed altogether or reduced by 75 percent.

"To the extent that Virgin continues to maintain that it is not liable, the amount of PAGA penalties will be immaterial should Virgin prevail on appeal," the judge responded.

But he did agree to knock the penalties down by a quarter, citing previous cases in which PAGA penalties were reduced when companies made good-faith efforts, before or during litigation, to comply with their obligations under the law.

"Where the law is clear, reducing penalties for these compliance efforts serves the statute's purposes by incentivizing compliance and ensuring that the penalty is proportional to the employer's course of conduct," he said. "Conversely, when the law is unclear, awarding the maximum penalties may be excessively punitive and their deterrence function weakened."

The workers are represented by Monique Olivier of Olivier Schreiber & Chao LLP and Alison Kosinski and Emily Thiagaraj of Kosinski and Thiagaraj LLP.

Virgin America Inc. and Alaska Airlines Inc. are represented by Robert Jon Hendricks, Nancy Villarreal and Brenden T. Killeen of Morgan Lewis & Bockius LLP.

The case is Julia Bernstein et al. v. Virgin America Inc. et al., case number 3:15-cv-02277, in the U.S. District Court for the Northern District of California.

--Editing by Alyssa Miller.

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