

1 UNITED STATES COURT OF APPEALS
2 FOR THE SECOND CIRCUIT

3 August Term, 2003

4 (Argued December 18, 2003

Decided August 10, 2004)

5 Docket No. 03-7798

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7 GARY H. RAMEY; DEAN R. DROZ; EUCLIDES PAIM; DENNIS J.
8 SEATH; RYAN T. ABDOOL; THOMAS P. O'GRADY; JOSEPH R.
9 CUMMINGS; ANTHONY GRGINOVICH; PETER T. EHRLING; MARTIN
10 HIGGINS; JOSEPH PESCATORE; JOHN I. RUDIC; ROCCO F.
11 SALERNO; MICHAEL J. DUNNE; GARRY HAGSTROM; MICHAEL A.
12 PITELLI; JOHN MCARDLE; THOMAS J. ENG; WILLIAM
13 MOSKOWITZ; MICHAEL J. ANDREWS; LASZLO MAYER; WAYNE P.
14 FEUERHERM; MICHAEL FRIM; CHARLES MORRO; JOHN UNTISZ;
15 RAYMOND J. SIMUTA; JAMES M. LOWE; JACK K. GRIMES; DAVID
16 R. HILL; JOHN W. LANE; STEPHEN R. CUNNINGHAM; ALAN W.
17 COCKERHAM; GERALD W. DAVIDSON; ALLEN D. HILTON; ERIC J.
18 STOFFER; GLENN R. PIGG; CHRISTOPHER A. KOBERG; ROBERT
19 L. ENGLAND; EDWARD S. MOORE; RICHARD SHIMKUS; RICHARD
20 ALLUZIO; ERNEST J. ANGELOSANTO; JAMES L. BARNES;
21 NORMAND J. CASTONGUAY; LLOYD CHENEY; MICHAEL CHESNA;
22 ROBERT P. CLINTON; RONALD E. COFFIN; JOHN H. CORKERY,
23 III; JOHN N. D'ANGELO; KENNETH C. DANISEVICH; ELVIO
24 DELISE; RONALD A. FRASER; JOSEPH J. HARRINGTON; JOSEPH
25 R. HUARD; RALPH L. IMBRIANO; HERBERT L. JOHNSON, JR.;
26 PETER D. LAWRENCE; ROBERT LEWIS; PAUL LEWIS; DONALD E.
27 LOEBER; JOSEPH McGRATH; WILLIAM A. MORGAN; GEORGE A.
28 NICHOLS; EDWIN F. PARSONS, JR. and ROBERT E. SMITH,
29 JR.,

30 Plaintiffs-Appellees,

31 v.

32 DISTRICT 141, INTERNATIONAL ASSOCIATION OF MACHINISTS
33 AND AEROSPACE WORKERS and INTERNATIONAL ASSOCIATION OF
34 MACHINISTS AND AEROSPACE WORKERS, AFL-CIO,

35 Defendants-Appellants,

36 KENNETH THIEDE, in his capacity as President and
37 General Chairman of District 141, International
38 Association of Machinists and Aerospace Workers; DAVID
39 SNYDER a/k/a DAVID "DUKE" SNYDER, in his capacity as

1 Assistant General Chairman, District 141, International
2 Association of Machinists and Aerospace Workers; US
3 AIRWAYS GROUP, INC.; US AIR, INC., a/k/a US AIRWAYS,
4 INC.; SHUTTLE, INC. and JOHN AND JANE DOES 1-20,

5 Defendants.
6 -----

7 B e f o r e: MESKILL, POOLER and SOTOMAYOR, Circuit Judges.

8 A union, its local, and union officials appeal from the
9 denial of their motions for judgment as a matter of law and for a
10 new trial following a jury verdict in the United States District
11 Court for the Eastern District of New York, Korman, J., finding
12 that they breached their duty of fair representation. We affirm.

13 JEFFREY A. BARTOS, Washington, DC (Joseph
14 Guerrieri, Jr., Guerrieri, Edmond &
15 Clayman, Washington, DC, of counsel),
16 for Appellants.

17 ERIC M. NELSON, New York City,
18 for Appellees.

19 MESKILL, Circuit Judge:

20 A group of plaintiffs sued their labor union in the
21 United States District Court for the Eastern District of New
22 York, Korman, J., alleging that the union breached its duty of
23 fair representation. A jury found for the plaintiffs, and the
24 union's motions for judgment as a matter of law and for a new
25 trial were denied. The union appealed, and we affirm.

1 BACKGROUND

2 Plaintiffs are airline mechanics currently employed by
3 US Airways, Inc. (USAir). They were formerly employed by Eastern
4 Airlines (Eastern). Plaintiffs have sued their labor union, the
5 International Association of Machinists and Aerospace Workers,
6 their local, District 141, and various union officials. For the
7 sake of simplicity, we refer to defendants collectively as IAM.

8 In early 1988, while plaintiffs were employed by
9 Eastern and represented by IAM, Eastern and the Trump
10 Organization (Trump) announced plans for a sale of the Eastern
11 Shuttle operation, a regional airline service, to Trump. Under
12 the terms of the proposed sale, Trump would acquire the entire
13 Eastern Shuttle operation, including planes, routes, landing
14 slots and equipment. Additionally, various Eastern employees
15 would be offered the opportunity to become employees of Trump and
16 operate the new airline, Trump Shuttle. The sale was completed,
17 and plaintiffs accepted the offer to work for Trump Shuttle. In
18 March 1989, shortly after the sale went through, Eastern declared
19 bankruptcy. During the course of the bankruptcy proceedings, IAM
20 took the position that plaintiffs should be viewed as having
21 "transitioned" from Eastern to Trump Shuttle, rather than having
22 resigned from Eastern and subsequently hired by Trump Shuttle.

23 While employed by Trump Shuttle, plaintiffs grew
24 frustrated with IAM's representation. Consequently, in 1990 they

1 voted out IAM as their labor union and voted instead to be
2 represented by the Aircraft Mechanics Fraternal Association
3 (AMFA). In 1992, as a result of Trump Shuttle's financial
4 difficulties, a consortium of banks took control of the airline
5 and renamed it Shuttle, Inc. (Shuttle). Almost immediately
6 thereafter, Shuttle entered into an agreement with USAir by which
7 USAir would manage Shuttle's operations. This agreement also
8 provided USAir with an option to purchase Shuttle within five
9 years.

10 In August 1992, the National Mediation Board (NMB)
11 granted USAir "single carrier status" for the purposes of
12 collective bargaining. As a result, AMFA ceased to represent
13 plaintiffs, and IAM, which represented the USAir mechanics,
14 resumed its position as plaintiffs' collective bargaining
15 representative.

16 Shortly afterward, so-called "mainline" USAir mechanics
17 -- those employed by USAir rather than Shuttle -- went on strike.
18 Plaintiffs were unsure whether they should join the strike. On
19 the one hand, their previous collective bargaining agreement,
20 which appeared to remain in effect despite USAir's assumption of
21 control of Shuttle, included a no-strike clause that could cause
22 them to lose their jobs if they joined in a strike. On the other
23 hand, they were now a part of the same local as their co-workers
24 at USAir, and there was some suggestion that their previous

1 collective bargaining agreement was extinguished, which would
2 free them to join the mainline strike. In the end, they opted
3 not to join in the strike.

4 In late 1992 or early 1993, IAM and USAir commenced
5 negotiations concerning the integration of plaintiffs into the
6 mainline workforce. The effect of integration would be to
7 include plaintiffs under the same collective bargaining agreement
8 as the mainline employees. This was attractive to plaintiffs
9 because it offered the prospect of higher pay and better
10 benefits.

11 The integration, or "mainlining," process required
12 USAir and IAM to come to an agreement as to how plaintiffs'
13 seniority status would be calculated with respect to their peers
14 in the mainline workforce. IAM has a longstanding policy of
15 "dovetailing" seniority lists, which involves blending the two
16 employee groups based on their pre-merger employment dates at
17 each of the merging airlines. In applying this policy to
18 plaintiffs, IAM had to decide what it would consider to be
19 plaintiffs' start dates at Shuttle. Plaintiffs felt that IAM
20 should apply their Eastern start dates because they viewed their
21 move from Eastern to Trump Shuttle as a "transfer." IAM,
22 however, argued that plaintiffs resigned from Eastern prior to
23 accepting employment at Trump Shuttle and, therefore, they should
24 only be accorded seniority classification from their start-dates

1 at Trump Shuttle.

2 Plaintiffs vigorously opposed IAM's preferred position
3 and retained Attorney Lee Seham to advocate on their behalf to
4 IAM. Plaintiffs believed that IAM had taken this position to
5 punish them for voting for AMFA during their brief period at
6 Trump Shuttle and for refusing to join the mainline strike when
7 Shuttle was taken over by USAir. Seham was unsuccessful in
8 persuading IAM to reconsider its position. IAM subsequently
9 presented its position to USAir. Before an agreement could be
10 reached, however, USAir decided not to proceed with the
11 mainlining and announced that it would not integrate the two
12 employee groups unless and until it decided to exercise its five-
13 year option to purchase Shuttle. Therefore, the seniority issue
14 receded into the background and plaintiffs continued to work for
15 USAir under a separate collective bargaining agreement.

16 In late 1997, USAir decided to exercise its option and,
17 in March 1998, it announced its intention to integrate the two
18 workforces. However, in July 1998, IAM announced that, based on
19 preliminary discussions, it appeared that USAir would not proceed
20 with integration "in the immediate future." Subsequently, in
21 December 1998, plaintiffs received a memo from IAM explaining
22 that IAM would once again take the position during negotiations
23 that plaintiffs' Eastern seniority should not be applied. It is
24 not clear from the record precisely when negotiations between

1 USAir and IAM formally commenced or when plaintiffs learned of
2 their commencement. In May 1999, USAir agreed to IAM's terms.

3 In late July 1999, plaintiffs instituted this action in
4 the United States District Court for the Eastern District of New
5 York, Korman, J., and alleged that IAM breached the duty of fair
6 representation it owed them under the Railway Labor Act, 45
7 U.S.C. § 151 et seq., by failing to accord them their Eastern
8 seniority.¹ They maintained that IAM punished them for having
9 chosen AMFA over IAM and for opting not to participate in the
10 mainline mechanics' strike in 1992. IAM moved for summary
11 judgment on various grounds, including that (1) it did not breach
12 its duty because its position was objectively reasonable, (2) the
13 statute of limitations had lapsed before plaintiffs instituted
14 the action, and (3) plaintiffs had insufficient evidence to prove
15 that IAM was motivated by hostility or animus toward plaintiffs.
16 Judge Korman denied the motion, Ramey v. District 141, 2002 U.S.
17 Dist. LEXIS 26670 (E.D.N.Y. Nov. 4, 2002), and the case proceeded
18 to trial.

19 IAM argued to the jury that its seniority decision was
20 reasonable because plaintiffs had resigned from Eastern before
21 they were hired by Trump Shuttle and, therefore, they were not

¹ Plaintiffs also included various other defendants and legal claims in their complaint, but these were dismissed early in the proceedings and do not concern us in this appeal. See Ramey v. District 141, 2002 U.S. Dist. LEXIS 26670, at *16-*17 (E.D.N.Y. Nov. 4, 2002).

1 entitled to their Eastern seniority. However, plaintiffs showed
2 that IAM had taken the position during the Eastern bankruptcy
3 proceeding that plaintiffs were to be viewed not as having
4 resigned from Eastern, but rather as having "transitioned" from
5 Eastern to Trump. Plaintiffs also elicited testimony to the
6 effect that IAM officials were hostile toward AMFA and those
7 associated with it.

8 The jury found in favor of plaintiffs, concluding that
9 IAM breached its duty because it had stripped plaintiffs of their
10 seniority out of animus. In particular, the jury found that, had
11 IAM not been hostile toward plaintiffs as a result of their
12 decision to be represented by AMFA, IAM would have sided with
13 them on the seniority issue.

14 IAM moved for judgment as a matter of law and for a new
15 trial, essentially renewing the arguments it had made in the
16 summary judgment motion. Judge Korman denied the motion and
17 entered judgment against IAM. The judgment included an
18 injunction requiring IAM to negotiate with USAir to amend the
19 seniority roster and provide plaintiffs with their Eastern start
20 dates. In addition, because some plaintiffs had been furloughed
21 by USAir as a result of their relatively lower start dates, the
22 injunction requires IAM to request that USAir restore these
23 plaintiffs to work.

24 This appeal followed.

1 DISCUSSION

2 IAM asserts various grounds for its appeal. First, it
3 argues that its conduct was objectively reasonable and, thus, it
4 did not violate its duty of fair representation. Second, it
5 maintains that the applicable statute of limitations period had
6 expired before plaintiffs brought this case. Third, IAM contends
7 that Judge Korman made two erroneous evidentiary rulings during
8 the course of the trial that merit reversal. Fourth, it
9 challenges the jury's verdict on the ground that the verdict was
10 not supported by sufficient evidence. Finally, IAM argues that
11 it is entitled to judgment against any plaintiff who did not
12 personally testify to establish damages. We reject each of these
13 arguments in turn.

14 I. IAM's Challenge to the Jury's Verdict

15 IAM maintains, as it did below, that the judgment
16 should be overturned because, despite the jury's finding that
17 IAM's seniority decision was motivated by animus, there was an
18 independent rational basis supporting its decision; namely, that
19 they had resigned from Eastern. In other words, IAM contends
20 that because an objective union, albeit one with different
21 policies, could have reasonably denied plaintiffs their Eastern
22 seniority, IAM should be immune from suit here even though it had
23 been motivated by animus toward plaintiffs as a result of their

1 having favored AMFA.² We do not agree.

2 "The statutory duty of fair representation was
3 developed [decades] ago." Vaca v. Sipes, 386 U.S. 171, 177
4 (1967). "[A] union breaches [this] duty . . . when its conduct
5 toward a member of the bargaining unit is arbitrary,
6 discriminatory, or in bad faith." Marquez v. Screen Actors
7 Guild, 525 U.S. 33, 44 (1998). Put differently, a breach occurs
8 when a union fails to "serve the interests of all members without
9 hostility or discrimination toward any, [] exercise its
10 discretion with complete good faith and honesty, [or] avoid
11 arbitrary conduct." Vaca, 386 U.S. at 177. "[A] union may not,
12 without a legitimate purpose, take action favoring some of its
13 members at the expense of others." Teamsters Local Union No. 42
14 v. NLRB, 825 F.2d 608, 611 (1st Cir. 1987) (citing Laborers and
15 Hod Carriers Local No. 341 v. NLRB, 564 F.2d 834, 840 (9th Cir.
16 1977); Barton Brands, Ltd. v. NLRB, 529 F.2d 793, 800 (7th Cir.
17 1976)). Additionally, "a union violates [its duty] when it
18 causes an employer to discriminate against employees on
19 arbitrary, hostile, or bad faith grounds." Barton Brands, 529
20 F.2d at 799.

21 Although our review of a union's collective bargaining

² IAM, of course, has never conceded that it was motivated by animus. However, we are bound by the jury's unequivocal determination that IAM would have accorded plaintiffs their Eastern seniority but for their association with AMFA.

1 "must be highly deferential [and must] recogniz[e] the wide
2 latitude that [unions] need for the effective performance of
3 their bargaining responsibilities," Airline Pilots Association v.
4 O'Neill, 499 U.S. 65, 78 (1991), "a union may not juggle the
5 seniority roster for no reason other than to advance one group of
6 employees over another" or to punish a disfavored group,
7 Rakestraw v. United Airlines, 981 F.2d 1524, 1535 (7th Cir 1992);
8 see also Teamsters Local Union No. 42, 825 F.2d at 612 ("[W]hen a
9 union attempts to prefer [one group of] workers based solely on
10 [their loyalty to their guild]," it has breached its duty.).
11 Finally, a union is not permitted to ignore its own policies to
12 punish a minority group within the union. Nellis v. Air Line
13 Pilots Association, 815 F.Supp. 1522, 1533 (E.D. Va. 1993) ("A
14 union is bound to follow its [own] policies."), aff'd, 15 F.3d 50
15 (4th Cir. 1994).

16 The jury found that IAM violated these principles.
17 Rather than treating plaintiffs as having transitioned from
18 Eastern -- a policy IAM announced in the Eastern bankruptcy
19 proceeding -- IAM instead opted to treat them as having resigned
20 in order to strip them of their seniority status for no reason
21 other than animus.

22 IAM seeks support for its position in the Seventh
23 Circuit's Rakestraw decision. In Rakestraw, the court held that
24 union members could not sue their union for dovetailing merger

1 lists even though the union's decision to dovetail contradicted
2 its own policy of arbitrating such disputes. 981 F.2d at 1527,
3 1533. Judge Easterbrook, writing for the court, held that
4 because "[a] rational person could conclude that dovetailing
5 seniority lists in a merger . . . serves the interests of [the
6 union membership] as a whole," id. at 1533, doing so could not
7 constitute a breach of the duty of fair representation.

8 Even assuming we were to adopt this rule, we cannot see
9 how it supports IAM's position. Unlike in Rakestraw, plaintiffs
10 here do not suggest that IAM acted improperly merely by
11 dovetailing the seniority lists. Rather, they argue that IAM was
12 motivated by retaliatory animus in choosing which seniority dates
13 to apply. The jury held, in effect, that IAM revoked plaintiffs'
14 seniority because it was hostile toward them as a result of their
15 association with AMFA. This, of course, is not objectively
16 reasonable. In ignoring its own position regarding plaintiffs'
17 status simply to punish them, IAM breached its duty of fair
18 representation.

19 II. The Statute of Limitations

20 _____ IAM next renews its claim, made below, that the statute
21 of limitations had run before plaintiffs instituted this action
22 on July 28, 1999. The parties agree that a six month statute of
23 limitations governs this case. They disagree, however, on the
24 date plaintiffs' cause of action accrued. IAM argues that the

1 statute of limitations began to run, at the very latest, on
2 December 14, 1998, and, as a result, the suit is time-barred.
3 Plaintiffs counter that the cause of action accrued no earlier
4 than January 28, 1999, and therefore their suit is timely.

5 For more than twenty years we have consistently held
6 that, in a suit alleging a breach of the duty of fair
7 representation brought by union members against their union, "the
8 cause of action accrue[s] no later than the time when [the union
9 members] knew or reasonably should have known that . . . a breach
10 ha[s] occurred." Santos v. District Council of New York City,
11 619 F.2d 963, 969 (2d Cir. 1980); see also Buttry v. General
12 Signal Corp., 68 F.3d 1488, 1492 (2d Cir. 1995) (same); Flanigan
13 v. Int'l Bhd. of Teamsters, Chauffers, Warehousemen & Helpers of
14 America, 942 F.2d 824, 827 (2d Cir. 1991) (same); Ghartey v. St.
15 John's Queens Hosp., 869 F.2d 160, 165 (2d Cir. 1989) (same).

16 Applying this standard to this case, we conclude that the cause
17 of action did not accrue prior to January 28, 1999, and therefore
18 this action was timely filed.

19 IAM initially suggests that the cause of action accrued
20 in 1993 when it announced its position that plaintiffs would not
21 be credited with their Eastern seniority. This argument borders
22 on the absurd because, although we have held that the harm that
23 results from the union's breach need not be beyond all doubt for
24 a cause of action to accrue, see, e.g., Buttry, 68 F.3d at 1492-

1 93 (holding that cause of action accrued when union manifestly
2 abandoned the interests of its members), we cannot accept IAM's
3 contention that the statute of limitations runs even in the face
4 of substantial doubt as to the likelihood of an ensuing harm.
5 When USAir announced that it would not proceed with the
6 mainlining of the Shuttle employees until it decided at the end
7 of five years whether to exercise its option to purchase, Shuttle
8 plaintiffs were given ample reason to question whether they would
9 ever be harmed by IAM's 1993 decision. Indeed, they would have
10 had no idea whether USAir would exercise its option and, if so,
11 whether and how USAir would move forward with mainlining.
12 Moreover, any suit filed in 1993 would have been based on
13 conjecture as to whether IAM's position might change during the
14 intervening time period. Faced with these facts, any district
15 court would have been obligated to dismiss as premature a suit
16 brought in 1993 because we do not permit speculative claims.
17 United States v. Fell, 360 F.3d 135, 139 (2d Cir. 2004) (Federal
18 courts may not "entangl[e themselves] in abstract disagreements
19 over matters that are premature for review because the injury is
20 merely speculative and may never occur.") (internal quotation
21 marks and citation omitted). Thus, plaintiffs' cause of action
22 did not accrue in 1993.

23 IAM argues in the alternative that the cause of action
24 accrued no later than December 1998 when it sent a memorandum to

1 all union members, including plaintiffs, announcing that
2 mainlining would proceed and that IAM would "take the position
3 [during negotiations with USAir] that [plaintiffs would be]
4 entitled to seniority on USAirways from their date of hire on
5 Trump Shuttle [rather than from their date of hire on Eastern]."

6 As we stated, it now is well settled that the
7 determination of the date of accrual turns on whether "plaintiffs
8 knew or reasonably should have known that . . . a breach had
9 occurred." Santos, 619 F.2d at 969 (emphasis added). We have
10 never held that a breach occurs when a union announces an
11 intention, even if it does so unequivocally, to advocate against
12 the interests of its members in the future. Rather, we have held
13 that the breach occurs when the union acts against the interests
14 of its members. To hold otherwise would invite plaintiffs to sue
15 whenever a union official announces a position with which they
16 disagree. This runs counter to our general policy favoring
17 internal resolution of labor disputes (as long as the disputes in
18 question remain internal), Ghartey, 869 F.2d at 164 (citing
19 policy favoring "non-judicial resolution of labor disputes"), and
20 would needlessly clog our court system with litigation over
21 whether a union's position is "final enough" to establish a cause
22 of action. Further, requiring union members to sue whenever a
23 union representative announces plans with which they disagree
24 would put the members in the difficult position of being in an

1 adversarial position against their union -- the very same union
2 that simultaneously must represent their interests.³ Childs v.
3 Pennsylvania Federation Bhd. of Maintenance Way Employees, 831
4 F.2d 429, 435 (3d Cir. 1987) (noting the danger associated with
5 filing a lawsuit of antagonizing a union that must continue to
6 represent a plaintiff's interests). For these reasons, we do not
7 require, or even permit, union members to bring a suit against
8 their union simply because the union has announced its future
9 intention to breach its duty.⁴

10 We find further support for our conclusion in well
11 settled principles of contract law. The duty of fair
12 representation owed by a union to its members is similar to a
13 contractual duty, and the union's announcement of its intent to
14 advocate against its members' interests may be compared to a
15 party's anticipatory repudiation of a contractual duty. In some

³ It is true that plaintiffs were in an adversarial position on the issue of seniority even before they brought their suit. However, invoking the judicial process and hauling an organization into federal court as a defendant clearly magnifies and heightens the adversarial nature of the relationship. Parties are understandably loathe to institute actions against those with whom they maintain ongoing relationships until it is absolutely necessary to do so.

⁴ In some limited circumstances, a suit for a preliminary injunction may be brought based on such an announcement. However, because the standards for obtaining preliminary injunctive relief are significantly higher than the standards for litigating a case after a breach has occurred, the possibility of maintaining a preliminary injunction proceeding does not trigger the statute of limitations.

1 anticipatory repudiation cases the aggrieved party may sue
2 immediately after the repudiation is announced. However, the
3 statute of limitations ordinarily does not begin to run, and the
4 cause of action does not accrue, until the date of the actual
5 breach; that is, until the date on which performance is due. See
6 Franconia Assoc. v. United States, 536 U.S. 129, 144 (2002)
7 (“[T]he time of accrual . . . depends on whether the injured
8 party chooses to treat the . . . [anticipatory] repudiation as a
9 present breach. . . . [I]f the injured party instead opts to
10 await performance, the cause of action accrues, and the statute
11 of limitations commences to run, from the time fixed for
12 performance rather than from the earlier date of repudiation.”)
13 (internal quotations marks and citations omitted); Kinsey v.
14 United States, 852 F.2d 556, 558 (Fed. Cir. 1988) (“[T]he normal
15 rule is that the statute of limitations begins to run from the
16 date of performance . . . unless the obligee elects to sue
17 earlier for anticipatory breach.”); Cary Oil Co. v. MG Refining
18 and Marketing, 90 F.Supp.2d 401, 412 (S.D.N.Y. 2000) (“[T]he
19 statute of limitations for failure to perform [does] not begin to
20 run [even in the case of an anticipatory breach] until the time
21 fixed for performance. The UCC appears to have adopted this
22 approach.”).

23 Applying this principle to the case at bar, the cause
24 of action accrued on the date on which performance was due,

1 namely the date on which IAM advocated a position on the
2 seniority issue to USAir. The December 1998 memorandum did not
3 inform plaintiffs that a breach already had occurred. At best,
4 it informed plaintiffs that IAM intended to breach on some
5 unspecified future date. As such, it alone could not have
6 triggered the statute of limitations. Indeed, we cannot
7 determine from the record precisely when negotiations between IAM
8 and USAir on the seniority issue began, let alone when plaintiffs
9 first learned that such negotiations had begun and that IAM had
10 taken an adversarial position. In sum, there is nothing to
11 suggest that plaintiffs should have known prior to January 28,
12 1999 that negotiations had begun and a breach occurred. This
13 action was instituted within six months of that date. Therefore,
14 it was timely.⁵

⁵ Because we hold that IAM has not met its burden to demonstrate that plaintiffs reasonably should have known that the breach occurred before January 28, 1999, we do not address the difficult and unsettled question of how certain it must be that harm will be caused by a union's breach in order to trigger the statute of limitations. We have held that the statute of limitations is triggered even if it is not absolutely certain that a union member will be harmed by a breach. See, e.g., Santos, 619 F.2d at 969 (a cause of action may accrue even if plaintiffs' position may be vindicated through non-judicial means). However, we note that there must be some likelihood that a harm will result from a union's breach before a member may file suit. Otherwise, such claims would be unduly speculative. Fell, 360 F.3d at 139 (federal courts may not "entangl[e] themselves" in abstract disagreements over matters that are premature for review because the injury is merely speculative and may never occur"). We caution district courts to consider this issue in the future when faced with a suit brought after a union breaches but before tangible harm is caused.

1 III. IAM's Challenges to Evidentiary Rulings

2 IAM also argues that the judge made two erroneous
3 evidentiary rulings that require reversal or a new trial. First,
4 IAM maintains that the judge improperly precluded cross-
5 examination of a witness regarding a key element of plaintiffs'
6 case. Second, it contends that the judge abused his discretion
7 in permitting the testimony of an attorney who previously had
8 represented plaintiffs. We reject both arguments.

9 1. Judge Korman's Limitation of Cross-Examination

10 Plaintiffs' first witness was Raymond Grebey, a former
11 Trump official. Through Mr. Grebey, plaintiffs introduced a
12 legal memorandum from 1991 that was filed in the Eastern
13 bankruptcy proceeding. The memorandum demonstrated that IAM had,
14 at the time of the bankruptcy proceeding, taken the position that
15 plaintiffs should be treated as "transitional employees" from
16 Eastern to Trump, rather than as "typically resigning employees."
17 This evidence was crucial to plaintiffs' case because it
18 undermined IAM's position at trial that a key consideration in
19 reaching its seniority decision was that plaintiffs had resigned
20 from their positions at Eastern before becoming Trump employees,
21 resulting in the loss of their Eastern seniority status. In
22 other words, plaintiffs used this evidence to argue that IAM's
23 position at trial was pretextual. The jury's verdict suggests
24 that this evidence had that effect.

1 On cross-examination, IAM's counsel questioned Grebey
2 about the proceedings in bankruptcy court. In particular,
3 counsel elicited from Grebey that the bankruptcy judge had
4 rejected IAM's position that plaintiffs should be considered as
5 "transitional employees" and instead ruled that they were to be
6 considered as resigning employees. Before counsel could proceed
7 further with this line of questioning, Judge Korman addressed the
8 jury and stated that "[t]he [only] relevance of [the 1991 legal
9 memorandum introduced by plaintiffs] is . . . for what was
10 represented by [IAM] . . . and the position [IAM] took [with
11 respect to the proper classification of plaintiffs]. Whatever
12 happened in the bankruptcy court is otherwise irrelevant." The
13 judge thus prohibited further questioning regarding the
14 bankruptcy proceedings.

15 On appeal, IAM argues that this ruling constituted
16 reversible error because the judge wrongly excluded relevant
17 evidence. IAM maintains that the outcome of the bankruptcy
18 proceeding was directly relevant to issues central to the case.
19 According to IAM, it intended to argue to the jury that although
20 it had sided with plaintiffs in the bankruptcy proceedings on the
21 issue of whether they were to be considered as having resigned or
22 merely "transitioned," IAM was forced to reevaluate its position
23 in light of the bankruptcy judge's ruling that plaintiffs were to
24 be treated as "resigning" employees for the purposes of the

1 bankruptcy proceeding. In other words, IAM wanted to argue that
2 although it had changed its position, it had done so reasonably
3 and not out of malice or animus towards plaintiffs.

4 An evidentiary ruling is reversible if it constitutes
5 an abuse of discretion and affects a party's substantial rights.
6 Schering Corp. v. Pfizer, 189 F.3d 218, 224 (2d Cir. 1999).

7 However, "a party seeking to preserve an objection to the
8 [district] court's ruling [on an evidentiary issue] must 'mak[e]
9 known to the court . . . the party's objection to the action of
10 the court and the grounds therefor.'" Beech Aircraft Corp. v.
11 Rainey, 488 U.S. 153, 174 (1988) (quoting Fed. R. Civ. P. 46).

12 We do not require trial counsel to provide a detailed
13 explanation of the basis for an objection to an evidentiary
14 ruling "in the heat of a trial." We require only that the court
15 be "put[] . . . on notice" of the party's concern and the basis
16 therefor. Id. In this case, however, IAM's counsel did not make
17 even the barest attempt to preserve the issue for appeal. No
18 objection or counter-argument was made when the judge ruled the
19 evidence in question to be inadmissible. Counsel never explained
20 to the judge his purpose in eliciting this testimony, and his
21 purpose was by no means clear from the questions. Judge Korman
22 may well have thought that defense counsel meant to imply to the
23 jury that the position taken by IAM during the bankruptcy
24 proceeding was somehow "wrong" as a matter of law and that IAM

1 was therefore required by law to adopt the position that
2 plaintiffs had retired from Eastern. If this had been the
3 purpose of the elicited testimony, then the district judge surely
4 was correct in excluding it as irrelevant to the issues in the
5 case. Defense counsel failed to articulate that he intended to
6 introduce the bankruptcy ruling only to explain to the jury why
7 IAM's change in position was reasonable. We therefore cannot
8 find that the judge was put on notice as to the purpose of IAM's
9 objection to his ruling. Accordingly, we will not entertain this
10 challenge to the judge's evidentiary ruling.

11 2. The Testimony of Plaintiffs' Former Attorney

12 During the course of the trial, plaintiffs called Mr.
13 Lee Seham to testify. From approximately 1991 through at least
14 the time of trial, Seham was an attorney who represented AMFA.
15 In 1993, when negotiations concerning mainlining originally took
16 place, Seham represented plaintiffs and wrote a number of letters
17 to IAM and USAir in which he argued that plaintiffs were entitled
18 to their Eastern seniority. Some of the letters threatened
19 litigation, but Seham never filed a case on behalf of plaintiffs,
20 perhaps because it became clear that mainlining would not take
21 place in 1993. It is undisputed that since 1993, Seham never has
22 performed further work for plaintiffs or represented them in any
23 capacity.

24 The substance of Seham's testimony at trial was that he

1 had been subject to hostility and animus from IAM as a result of
2 his representation of AMFA. Seham testified that beginning
3 roughly in 1991, IAM officials repeatedly and publicly accused
4 him of being a liar and of being "in it [just] for the money" for
5 no reason other than his relationship with AMFA. In addition, he
6 testified that meetings at which he spoke were frequently
7 interrupted by catcalls from IAM representatives. He also
8 testified that various written materials produced by IAM had
9 depicted him as a liar who was controlling AMFA for his own
10 financial gain.

11 Plaintiffs elicited this testimony to demonstrate that
12 IAM was hostile to those associated with AMFA. This, in turn,
13 supported their claim that IAM's adverse decision concerning
14 plaintiffs' seniority was a result of plaintiffs' association
15 with AMFA before IAM took control of their unit, rather than a
16 neutral policy related to plaintiffs having resigned from Eastern
17 before moving to Trump.

18 Prior to Seham's being called to the stand, IAM
19 objected to his testimony on the ground that "lawyers
20 representing litigants should not be called as witnesses in
21 trials involving those litigants if such testimony can be avoided
22 consonant with the end of obtaining justice." United States v.
23 Alu, 246 F.2d 29, 33 (2d Cir. 1957). Judge Korman rejected this
24 application of the so-called "advocate-witness rule" because

1 Seham never represented plaintiffs in the case at bar -- or any
2 case, for that matter. Further, Seham would testify merely to
3 facts of which he had personal knowledge, namely the hostility he
4 encountered from IAM officials simply as a result of his
5 association with AMFA. IAM has renewed its argument against
6 Seham's testimony on appeal.⁶

7 Judge Korman properly recognized that there is no hard-
8 and-fast rule against testimony by attorneys who have represented
9 clients in the past. The advocate-witness rule applies, first
10 and foremost, where the attorney representing the client before a
11 jury seeks to serve as a fact witness in that very proceeding.
12 The concerns implicating the rule are that (1) the lawyer will
13 appear to vouch for his own credibility, (2) the lawyer's
14 testimony will put opposing counsel in a difficult position when
15 he has to vigorously cross-examine his lawyer-adversary and seek
16 to impeach his credibility, and (3) there may be an implication
17 that the testifying attorney may be distorting the truth as a

⁶ IAM also appears to argue that Seham's testimony was "irrelevant" to the issues at trial because it related solely to his experiences as an advocate for AMFA and not to any hostility directed toward plaintiffs by IAM officials. This argument is plainly without merit. Evidence is relevant if it has "any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." Fed. R. Evid. 401. If IAM officials directed hostility and animus toward Seham simply as a result of his association with AMFA, that tends to support plaintiffs' claim that IAM was hostile towards them as a result of their association with AMFA.

1 result of bias in favor of his client. See Culebras Enterprises
2 Corp. v. Rivera-Rios, 846 F.2d 94, 99-100 (1st Cir. 1988). Most
3 important, when one individual assumes the role of both advocate
4 and witness it "[may] so blur[] the line between argument and
5 evidence that the jury's ability to find facts is undermined."
6 United States v. Arrington, 867 F.2d 122, 126 (2d Cir. 1989).

7 For the most part, these "concerns are absent or, at
8 least, greatly reduced, when [as here] the lawyer-witness does
9 not act as trial counsel." Culebras Enterprises Corp., 846 F.2d
10 at 100. The only concern that may remain is the implication that
11 Seham may have been biased in his testimony as a result of his
12 former representation of plaintiffs. If the fear of bias were
13 sufficient on its own to prevent Seham from testifying, then a
14 similar argument could be made that an accountant, doctor, or
15 anyone else who ever had a relationship with a party should be
16 forbidden to testify out of a concern for potential bias. That,
17 of course, is not the rule. Rather, we permit the opposing party
18 to cross-examine the witness and raise to the jury any challenges
19 to the credibility of the witness. See 27 Charles Alan Wright &
20 Victor James Gold, Federal Practice and Procedure § 6012, at 179,
21 180 (1990) (noting that potential bias alone does not justify the
22 advocate-witness rule). Indeed, IAM's counsel elicited from
23 Seham his prior relationship with plaintiffs, apparently in an
24 attempt to impeach his credibility.

1 Given that the professional relationship between Seham
2 and the plaintiffs was of short duration, and ended long before
3 the case came to trial, we do not see how this relationship alone
4 would disqualify Seham from testifying, particularly since his
5 testimony -- that IAM was hostile to those who associated with
6 AMFA -- went to the heart of the case.

7 This conclusion is supported by the way in which we
8 have addressed the advocate-witness issue in previous cases. We
9 have suggested that where an attorney must take the stand to
10 represent a client, a trial judge could, in his or her
11 discretion, avoid any problems simply by requiring the party to
12 retain new counsel. See United States v. Kwang Fu Peng, 766 F.2d
13 82, 86-87 (2d Cir. 1985); United States v. Cunningham, 672 F.2d
14 1064, 1074 (2d Cir. 1982). In other words, the remedy where an
15 attorney is called to testify may be to disqualify the attorney
16 in his representational capacity, not necessarily his testimonial
17 capacity. See 27 Wright & Gold, supra, § 6012, at 176, 183.
18 Here, of course, there was no need to disqualify Seham from
19 representing plaintiffs because, at the time of the trial, he no
20 longer represented them. For these reasons, Judge Korman did not
21 abuse his discretion in permitting Seham to testify.

22 IV. Sufficiency of the Evidence

23 IAM next argues that the evidence submitted at trial
24 was insufficient to support the jury's conclusion that IAM was

1 motivated by hostility when it decided not to apply plaintiffs'
2 Eastern seniority. "A party seeking to overturn a verdict based
3 on the sufficiency of the evidence bears a very heavy burden."

4 Norton v. Sam's Club, 145 F.3d 114, 118 (2d Cir. 1998).

5 We will upset a jury verdict only if there is such a
6 complete absence of evidence supporting the verdict that
7 the jury's findings could only have been the result of
8 sheer surmise and conjecture. We must view the evidence
9 in the light most favorable to the party in whose favor
10 the verdict was rendered, giving that party the benefit
11 of all reasonable inferences that the jury might have
12 drawn in his favor.

13 Id. (internal citations and quotation marks omitted).

14 In this case, there was ample evidence, when viewed in
15 the aggregate, to support the verdict. IAM claimed at trial that
16 its motivation for stripping plaintiffs of their Eastern
17 seniority was their having resigned from Eastern. This claim was
18 belied by the position it had taken during the Eastern bankruptcy
19 proceeding that plaintiffs were to be considered as merely having
20 transitioned from Eastern to Trump. Once plaintiffs showed that
21 IAM's purported neutral motivation was pretextual, they only
22 needed to convince the jury that the single other motivation
23 suggested by either party -- animus as a result of plaintiffs'
24 association with AMFA -- was the reason for IAM's adverse
25 decision.

26 Plaintiffs met this burden by producing various pieces
27 of evidence pointing to this rationale. For instance, at least
28 one plaintiff testified to personal knowledge of the acrimony

1 between IAM and AMFA. Further, at least one IAM official
2 testified as to the hostility between the groups. In addition,
3 with respect to plaintiffs themselves, the minutes of an IAM
4 local lodge stated that plaintiffs "voted for AMFA. IAM will now
5 go for their jobs." Similarly, various IAM union members
6 petitioned IAM officials not to accord plaintiffs their Eastern
7 seniority because they voted in favor of AMFA. Viewing this
8 evidence in the aggregate and in light of Seham's corroborating
9 testimony that IAM officials were themselves hostile towards
10 those associated with AMFA, the jury reasonably could have
11 believed that IAM was swayed by the sentiments expressed by its
12 members and officials.

13 V. Application of the Verdict to All Plaintiffs

14 Finally, IAM contends that only those plaintiffs who
15 testified at trial as to their losses should be permitted to
16 benefit from the jury's verdict and that IAM is entitled to
17 judgment against all other plaintiffs. Frankly, we do not
18 understand the basis for this challenge. We never have held that
19 every plaintiff must testify as to his or her personal losses in
20 order to establish liability for the implementation of a policy
21 that was applied equally to all plaintiffs. We decline to do so
22 today.

23 CONCLUSION

24 For these reasons, we affirm.