

SYSTEM BOARD OF ADJUSTMENT

IN THE MATTER OF ARBITRATION

OPINION AND AWARD

between

SOUTHWEST AIRLINES

**BNA-R-0088/12 [REDACTED]
[REDACTED] – Time Frame Issue)**

And

**TRANSPORT WORKERS UNION OF
AMERICA, AFL-CIO, LOCAL 555**

Gil Vernon, Arbitrator

APPEARANCES:

On Behalf of the Union: Brian Smith, Grievance Specialist –
Local 555

On Behalf of the Company: Kevin Minchey, Attorney - SWA

I. ISSUE

The Parties framed the issue presented by the grievance before the Arbitrator in different ways. The Union framed the issue as follows:

“Was [REDACTED] suspended under the guidelines of the contract, and if not, what should the remedy be?”

The Company framed the issue as follows:

“Did the Company suspend the grievant? If so, did the Company fail to present the basis for the suspension in writing to the grievant and the Union within two working days of the suspension, and if so, what is the appropriate remedy?”

II. RELEVANT CONTRACT LANGUAGE

ARTICLE TWENTY GRIEVANCE/SYSTEM BOARD/ARBITRATION DISCHARGE AND DISCIPLINE

SECTION ONE PROCEDURES

E. **Time Frames.** For purpose of this Article, a working day shall be defined as Monday through Friday, excluding all Company recognized holidays. It is expressly understood and agreed that, if any of the time frames set forth in this Article are violated by the Company, the Employee shall be awarded the desired settlement without precedent. Furthermore, if the time frames set forth are violated by the Union the grievance shall be considered withdrawn. Determination of time frame violation issues shall take precedence over consideration of any other issue, and, if upheld, no further determination shall be appropriate.

G. **Fact-Finding Procedures.** No covered Employee shall be subject to discipline involving loss of pay or discharge without first having the benefit of a factfinding, with the right to have a Union representative present, in accordance with the following procedures:

1. No Suspension. In circumstances where no suspension is imposed:
 - a. The Employee shall be advised, in writing, with a copy to the local representative of the Union, of the nature of the factfinding not later than ten (10) calendar days from the time the Company becomes aware of the incident concerning which the factfinding shall be convened.

2. **Suspension.** Notwithstanding the foregoing, the Company may suspend a covered Employee pending a factfinding and/or until such time as the decision of the Company resulting from the factfinding is rendered, subject to the following conditions:
 - a. The suspension shall be a paid suspension;
 - b. The basis for the suspension shall be reduced to writing and presented to the Employee and the local representative of the Union within two (2) working days of the suspension;

- c. The factfinding shall be held within three (3) working days of the presentation of the written notice of the basis for the suspension; and
- d. The Company shall render its decision (inclusive of any discipline) in writing to the Employee, within five (5) working days after completion of the factfinding, and a copy of the decision shall be delivered to the local representative of the Union.

III. BACKGROUND AND FACTS

The basic facts are undisputed. Grievant was a Ramp Agent until he was discharged on January 20, 2012. The merits of that discharge are not before the Arbitrator. What is before the Arbitrator is whether the manner the Company went about making its decision to terminate Grievant complied with the contractual time frames in the Collective Bargaining Agreement.

The discharge action was set in motion on Thursday, January 5, 2012 when his car, which he drove to work that day and parked in the airport public parking garage, rolled out of its parking spot hitting another vehicle. Presumably, through registration information, the police contacted the Grievant. When he arrived at the vehicle, airport police alleged they had found illegal drugs in his truck.

According to the testimony of the arresting officer, he placed Grievant under arrest and took him to the police building at the airport to process him. That process included an inventory of the property in his possession.

These items included his Southwest Airlines Company identification badge

and his “SIDA” access badge. “SIDA” is an acronym for “Secure Identification Display Area”. Each airport under the authority of the Transportation Security Administration and consistent with the law issues SIDA badges to employees after a background check. An airline employee must have a SIDA badge to legally enter non-public and secured areas of an airport. Without it an employee such as Grievant cannot work. The badge is considered property of the airport and can be seized or revoked by airport authorities consistent with regulations. An employee can also not work without a company ID badge. The SIDA badge must be displayed while in secured areas.

Before taking Grievant to central booking, the airport police officer confiscated the Grievant’s SIDA access badge. The rest of his possessions were transported with Grievant. The police also contacted Grievant’s supervisor, Elias Rodriguez. Rodriguez and Mike Rollins went to the police to ascertain what the situation was.

When an assessment was made Rollins contacted a supervisor and requested a notice be created and faxed to him (so he could give it to the Grievant) directing Grievant attend a fact-finding meeting on Monday January 9, 2012. The notice given to the Grievant read in pertinent part as follows:

“Your attendance is required at a fact-finding meeting scheduled for January 9th, 2012 at 1300pm at Mike Rollins’ office to discuss Possession of drugs and stolen Company property.

“You may have your Union Representative present.”

Before leaving the police facility, the police asked if Grievant’s company ID badge was company property and correctly Rodriguez said “yes”. The police then transferred custody of the badge to Rodriguez. The fact-finding was held on January 9 and on January 10. He was discharged. Subsequently, a grievance was filed protesting the discharge of grievant on procedural and substantive grounds. In accordance with Article 20 Section E, the grievance was advanced to this System Board to have the time frame issue resolved first.

The record also indicates Grievant was not scheduled to work Friday. The Company anticipating he might not be at work covered his shift Saturday. Grievant did not make any effort to (1) report on Saturday or Sunday by either searching out the whereabouts of his SIDA badge or company ID badge, or (2) cover his shift in another manner such as a shift trade. The Company assessed his attendance for missing these shifts.

IV. POSITION OF THE PARTIES (SUMMARY)

A. The Union

The backbone to the Union’s argument is the assertion that the Company suspended Grievant by taking his badges. In doing so, it failed to adhere to contractual requirements of a suspension in several respects.

First, the Company violated the contractual time frames by not putting in writing the basis of the suspension. Second, even though the Company suspended the Grievant pending the investigation, the Company failed to notify him of this fact in writing.

As evidence that Grievant was suspended by the Company, in addition to taking his badges, the Company covered Grievant's Saturday shift by noon on Friday. It was therefore inappropriate to treat that shift as a "no-show" because the Grievant has until one-half hour before his shift to report his absence.

It is further the Union's position that under the CBA, violation of time frames results in awarding the grievance. The contract is clear that the language in the CBA regarding time frame violations is clear and unambiguous. Thus, the Arbitrator must enforce the contract as he has no authority to add, subtract, delete or modify contract language.

In anticipation of the Company's argument, the Union contends whether or not Grievant can be badged is irrelevant to the grievance at hand. This is because the Company did not terminate his employment for not having a badge or being able to obtain a badge. Accordingly, this is nonetheless irrelevant as not only was there nothing about not having a badge or being able to be badged in the termination letter issued to Grievant on January 10, 2012.

The Company

The Company notes at the outset that whether the Company decides to suspend an employee pending an investigation (“fact finding”) or not, advanced written notice is required prior to the meeting. Both sides testified that the only difference between the two notices is that the suspension fact-finding notice contains the word “suspension”. In this case, the notice was for a non-suspension fact-finding. It did not state that [REDACTED] was being suspended pending the fact-finding meeting pursuant to Article 20(G)(2) in the CBA. Instead, the notice only stated that [REDACTED] was to appear for a fact-finding meeting. The Supervisor also testified he did not intend to suspend Grievant.

As for the Supervisor taking Grievant’s SWA Company badge, there is nothing in the Collective Bargaining Agreement (CBA) that says an employee is suspended if the Company takes possession of a badge. Rather, the CBA is clear that the only way the Company can suspend an employee is to give that employee a written notice stating the employee is suspended. The record is clear too that the Supervisor didn’t take it with any intention. The police asked him if it was Company property (which it is) and the police gave it to him. It was not taken to suspend the Grievant.

Grievant didn’t work Saturday and Sunday because he made no effort—consistent with past practice—to get his badges back or cover his shifts. The fact

he did not follow the Parties' practices and procedures should not somehow convert his case into a suspension. Grievant had prior experience losing his SIDA badge and did not make an effort to get it back in this case. There should have been no confusion that he wasn't being suspended because the notice didn't say so as it did once before when Grievant was investigated.

Even if the Arbitrator finds that [REDACTED] was suspended, the Company did not violate any timeframes under the CBA. Grievant was told of the basis of the fact-finding and the meeting was held within three days. Since all of the other relevant timing issues were followed by the Company, the Union cannot take advantage of the time frames "penalty" in Article 20(E).

Last, even if there was a contract violation, the remedy in this case is not reinstatement with full back pay. This is not the typical scenario. Grievant was not suspended.

V. OPINION AND DISCUSSION

This is an unusual situation to be decided on its own facts and circumstances. There are two tracks or avenues under which the Employer can proceed when it considers disciplining an employee. Both tracks involve a fact-finding investigation. However, under the first procedure Article 20(G)(1), the employee is allowed to work his or her schedule and continue earning hourly

wages pending the meeting. The second track is similar in some respects and different in others.

It is different in the respect that the employee at the Employer's option can be removed from the workplace (in the words of Article 20 "suspend") pending investigation. It is similar in that the employee gets paid pending the fact-finding notice (which must be issued with two days of the removal from the workplace) and gets paid pending the fact-finding to be held within three days of the notice) and gets paid pending the decision to discipline or not (which must be made in writing within five days of the completion of the investigation). Article 20(G)(2) also differs from (G)(1) in that the former has an expedited timeframe in which to hold the hearing and make a decision which is helpful to the employee and coincidentally to the Company since it is obligated to be paying the employee while the clock is ticking.

Even if the notice of January 5 notice was intended to remove the Grievant from the workplace or to "suspend" him, the Employer makes a strong case that the time frames and the requirement to give him the basis of the fact finding (possession of drugs) were met.

If there is a violation of Article 20(G)—again assuming he was "suspended"—it arguably occurred because either (1) the Company didn't satisfy the requirement in Article 20(G)(2)(a) that the suspension shall be a paid

suspension or (2) on the plain and simple grounds that the employer violated the preamble to Article 20(G) by causing the Grievant to lose pay for Saturday and Sunday “ . . .without first having the benefit of a fact finding”.

This is where the issue of the badges is relevant. If only the Company ID was involved, the Arbitrator would tend to agree the Company caused the Grievant’s loss of pay and that would be improper. However, the SIDA access badge is really a matter under the control of the airport. The SIDA badge was confiscated by the airport police so Grievant’s loss of pay was not due to any action of the Company. Grievant acknowledged that a SIDA access badge is a job requirement and it is his responsibility to maintain it. He took no action to get it back in order to work Saturday and Sunday including asking the Company for assistance. Grievant had experience with this in the past and did nothing to mitigate or address the loss of the SIDA access by action of the police.

In summary, there is no violation of Article 20(G).

AWARD

The questions submitted to arbitration are
resolved as set forth above.

Gil Vernon
Arbitrator

Dated this ____ day of September, 2012.