

IN THE MATTER OF ARBITRATION )  
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SOUTHWEST AIRLINES CO. )  
)  
)  
and )  
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)  
TRANSPORT WORKERS UNION OF )  
AMERICA, AFL-CIO, LOCAL 555 )

Case SAN-R-0460/12

Michelle Morgan, Esq., for the Employer  
Brian Smith, for the Union  
Before Matthew M. Franckiewicz, Arbitrator

**OPINION AND AWARD**

This arbitration proceeding involves the discharge of Grievant [REDACTED]

A hearing was held on June 5, 2012, at Dallas Texas. Both parties called, examined and cross examined witnesses, and offered documentary evidence. Both parties filed briefs. The record closed with the receipt of briefs on July 27, 2012.

**Contract Provisions Involved**

ARTICLE TWENTY  
GRIEVANCE / SYSTEM BOARD / ARBITRATION  
DISCHARGE and DISCIPLINE

SECTION ONE  
PROCEDURES

- A. Purpose. No Employee who has passed his probationary period shall be disciplined to the extent of loss of pay or discharge without just cause.
  
- B. Representation Requirements. The Union and the Company shall be represented at each location. These representatives shall be empowered to settle all local grievances without setting precedent of any kind. The Local Representatives for the Union shall be selected from members of the Union who qualify under Article Two. The Local Representative for the Company shall be the Manager or his designee. Neither party shall

be represented by legal counsel through and including the System Board. Legal representation shall be permitted in the case of Arbitration.

C. Cost of Arbitration. It is understood and agreed that the cost of arbitration shall be borne by the losing party.

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.

b. The factfinding shall be held within five (5) calendar days from the date such notice is given to the Employee and the local representative of the Union; and

c. 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.

L. Interpretation/Application of Agreement. In the event of a grievance arising over the interpretation of, or application of, this Agreement, or in the event of a disciplinary action other than discharge, the following steps shall apply. However, if the action involves discharge or a Union grievance concerning a change in Work Rules, it shall proceed to sub-paragraph 3, below. Decisions made pursuant to Steps 1 through 3, below, shall not constitute precedent of any kind unless agreed to, in writing, by the Union and the Company.

14. Arbitration/Function and Jurisdiction. The functions and jurisdiction of the Arbitrator shall be as fixed and limited by this Agreement. He shall have no power to change, add to, or delete its terms. He shall have jurisdiction only to determine issues involving the interpretation or application of this Agreement, and any matter coming before the Arbitrator which is not within his jurisdiction shall be returned to the parties without decision or recommendation. In the event any disciplinary action taken by the Company is made the subject of proceedings, the Arbitrator's authority shall, in addition to the limitations set forth herein, be limited to the determination of the question of whether the Employee(s) involved were disciplined for just cause. If the Arbitrator finds that the penalty assessed by the Company was arbitrary or unreasonable, he may modify or remove that penalty.

## The Facts

This case involves the termination of Grievant [REDACTED], a Ramp Agent in San Diego with 17 years of service, for allegedly selling or attempting to sell Buddy Passes. His evaluations have generally been better than satisfactory.

Southwest Airlines maintains a “Freedom to Get out of Town” program, under which employees can receive up to four Buddy Passes per quarter. An employee may use a Buddy Pass for his or her own personal travel, or may transfer a Buddy Pass to a friend or relative. As the Southwest Airlines Pass Policy states, “Buddy Passes may be given to anyone.” But while an employee is free to *give* a Buddy Pass to anyone, an employee is not permitted to *sell* a Buddy Pass. The same policy states “The selling of passes or attempted sale of a pass for monetary compensation is grounds for immediate termination.”

There is no prohibition on employees trading Buddy Passes. For example, if an employee currently has no Buddy Passes available, he or she can obtain one from a co-worker, and repay the co-worker the next quarter, in effect borrowing a Buddy Pass. The Buddy Pass includes the name and Employee Number for the employee to whom it was issued, and if an employee transfers a Buddy Pass to a co-worker, the two are to cross off the name of the employee to whom the Buddy Pass was issued, and hand write in the name of the employee to whom it was given.

Since Buddy Passes are taxable for income tax purposes, an employee who transfers a Buddy Pass to someone else may be reimbursed for the tax, to a maximum of \$20 per pass. But the Company forbids employees from selling Buddy Passes. The Southwest Airlines Pass Privilege Policy states:

The selling of passes or attempted sale of a pass for monetary compensation is grounds for immediate termination.

Exchanging a pass for a cash equivalent is strictly prohibited, and any Employee who engages in this or any activity related to the sale of a pass will be subject to pass suspension and/or termination of employment.

The confirmed sale of or attempted sale of a pass (or passes) will result in action up to and including termination of employment. Examples of an attempted sale include, but are not limited to, passes posted in classified ads or online via auction sites, blogs, or social networks.

Other Company communications also address the sale of Buddy Passes. The Basic Principles of Conduct states:

Each Employee is expected to be familiar with and adhere to all Company policies and procedures. Any violation of the following will be grounds for disciplinary action. Discipline may range from a reprimand to discharge, depending on the particular violation and the circumstances. The following list is meant to be representative only, and in no way is it intended to be a complete list of all violations of our Basic Principles of Conduct.

29. Violation of pass privilege rules or interline agreements may result in discipline. Attempted sale or sale of passes will result in termination.

A memorandum on Sale or Attempted Sale of Passes, dated January 1, 2010, states in part (emphasis in original):

The rule concerning the sale of passes has changed to “**The confirmed sale or confirmed attempted sale of a pass (or passes) will result in action up to and including termination of employment. Examples of an attempted sale include, but are not limited to, passes posted in classified ads or online via auction sites, blogs, or social networks.**” This policy changed on September 15, 2009.

As Southwest Airlines Employees, nonrevenue travel is a privilege *not* an entitlement. The rules governing pass privileges are intentionally designed to ensure fairness and consistency, including rules about selling or attempting to sell a pass or passes. The sale or attempted sale is a very serious offense and could result in the loss of your job.

Grievant [REDACTED] was discharged after a fact-finding, for alleged violation of the Basic Principles of Conduct with respect to sale of Buddy Passes. His termination notice, dated March 9, 2012, and issued by Assistant Station Manager Ramp & Operations Phil Stachowski, states:

On March 6<sup>th</sup>, 2012, a Fact-Finding was held to discuss your possible involvement in the sale of Southwest Airlines Buddy Passes. Present at this meeting were you, TWU Representative [REDACTED], TWU Representative [REDACTED], Ramp Supervisor Doug Chang, and myself.

After a thorough and complete investigation into this matter, and after considering the evidence and testimony presented at the Fact-Finding meeting it has been determined that you were involved in the sale of Southwest Airlines Buddy Passes which is a direct violation of the Basic Principles of Conduct, specifically but not limited to:

29. Violation of pass privilege rules or interline agreements may result in discipline. Attempted sale or sale of passes will result in termination.

Based on the above, and as a result of your actions, your employment with Southwest Airlines is terminated effective immediately.

On April 21, 2003, Grievant [REDACTED] received a warning of future pass suspension because a third party allegedly sold passes issued to [REDACTED]. On June 24, 2008 he received a six month suspension of pass privileges because a person using [REDACTED] Buddy Pass “complained loudly and caused a scene when he was not accommodated as a revenue Customer because he was under the impression that he had ‘purchased’ a ticket on Southwest.” On June 3, 2009 he was issued a one year suspension of pass privileges over an “incident in SAN involving the use of an allegedly sold Buddy Pass.” On July 11, 2011 he received an indefinite suspension of pass privileges, although the notice does not identify specifically the alleged misuse involved.

Suspension of pass privileges is not considered to be discipline, and is therefore not subject to the grievance procedure. For this reason, I do not rely on the prior suspensions as proving a proclivity to violate Buddy Pass rules, nor as useful in resolving the credibility dispute which will be discussed in more detail below.

Instead, I find that their relevance is limited to showing the importance the Company places on avoiding misuse of pass privileges.

Over the Union's objection, I permitted the Company to elicit testimony by video conference from [REDACTED] a non-employee of Southwest.

[REDACTED] testified that she has never met [REDACTED] in person, but has spoken to him by telephone. According to [REDACTED], [REDACTED], a grade school friend who now lives in California and who said she used to date a friend of [REDACTED], gave [REDACTED] contact information to [REDACTED] and said that he had access to Buddy Passes. She stated that she phoned him in August or September 2011 and said that she had heard he could get tickets. She said that [REDACTED] replied that he would provide them for \$200 each. She said she needed two tickets and asked how to get the money to him. He asked if there was a Chase Bank in the area, and when she said there was, he gave her his account number to deposit the money. She made the deposit to the account in cash. She testified that although he said he would FedEx the tickets back to her, it took a while for them to arrive.

[REDACTED] stated that a few months later she called [REDACTED] again and arranged to deposit \$400 to his account for two more Buddy Passes. The tickets never arrived, and after a while [REDACTED] stopped returning her calls. After about two months, she called Southwest and complained that she had not received the tickets nor her money back. She related what had happened, and agreed to send an email with her documentation of the events.

[REDACTED] email to Research & Resolution Specialist Cathy Nusbaum, dated February 29, 2012, stated that somewhere between August and October 2011 she deposited cash directly into [REDACTED] account. Her email stated "I do not have a transaction log for that deposit into his account because I deposited cash directly into his account, account number [there is no dispute that the account number she gave is in fact [REDACTED] account]." She stated that she and a companion traveled to Las Vegas on November 20 and returned on November 23, 2011. Her email said that she understood that [REDACTED] was on a Buddy Pass suspension and would obtain the tickets from someone else. She said that [REDACTED] told her to write a different name on the tickets. She recalled the first name as Chris, but could not remember the last name. Her email said that she made a second deposit of \$400 on December 28 to the same account number. She stated that she never intended to take it so far, but every time she talked to him he said the tickets were coming, but lately she could not get a return call from [REDACTED], and she wanted either her tickets or her money.

At the arbitration hearing [REDACTED] identified the documents she had attached to her email, and two other documents she found later:

1. A hand written Chase withdrawal slip in the amount of \$400 dated December 28, 2011.
2. A copy of the handwritten Chase deposit slip dated December 28, 2011 with [REDACTED]' name and account number on it, in the amount of \$400. There is no dispute that the account number is that for [REDACTED]' account.
3. The business card of the teller at Chase who retrieved the documents from Chase records.
4. A Chase withdrawal receipt dated December 28, 2001 in the amount of \$400.

5. A Chase deposit receipt dated December 28, 2011 in the amount of \$400.

She also authenticated copies of four Buddy Passes relating to her November Las Vegas trip. On the Buddy Passes, [REDACTED]' name is lined through, and the name [REDACTED] is added. [REDACTED] denied knowing [REDACTED].

[REDACTED] further testified that a few days after she complained to Southwest, [REDACTED] phoned her from a telephone number she did not recognize as his. He said that she had called his job, and she replied that she wanted her money back. [REDACTED] said that someone had called his job to complain that he owed money, and that he no longer had her telephone number. He said that he would call back from a different area code, but [REDACTED] never heard from him again.

Electronic documents retrieved from Cirrus records indicate that [REDACTED] and the companion she identified at the arbitration hearing traveled from Columbus to Las Vegas on flight 2987 on November 20, 2011 and returned on November 23, on flights 1148 and 1159, connecting at Midway Airport in Chicago. The Cirrus report indicates that the travel was on a non-revenue ticket, although it does not specifically indicate whether a Buddy Pass was used. The Buddy Pass retrieved from Southwest records indicates that it was issued on January 27, 2011 to [REDACTED]. On all the flight coupons and transfer passes, [REDACTED] name is lined through, and [REDACTED]' name is hand printed. On all four, [REDACTED] name is also lined through, and on three, the name [REDACTED] is hand printed. The Buddy Pass documents do not identify the flights on which they were used.

In his testimony Grievant [REDACTED] denied ever selling passes to [REDACTED]. He testified that he had been dating [REDACTED] for several months as of late 2011, although the two had been acquainted for about five years. In December 2011 he was having money problems and asked [REDACTED] if he could borrow \$400 or \$500 to pay his rent and bills. [REDACTED] said she would do what she could, and would call him back in a few days. Around December 28 Shepherd called back and said that she had deposited \$400 into his account. [REDACTED] said he would pay it back when he got his income tax refund. He stated that in early January, [REDACTED] called him. She was upset and said she wanted her money right now, if he was seeing other girls, he ought to get his money from them, and if she did not get her money that day, he would be sorry. [REDACTED] replied that he had a large payment coming up on January 5 and another on January 20 (his twice monthly payments from Southwest), that he would pay what he could on the 20<sup>th</sup> and the rest when he got his tax refund.

[REDACTED] stated that after his fact-finding, he called [REDACTED], but she would not talk to him, and that he also called [REDACTED] whose name he had gotten at the fact-finding, but that she would not talk to him either.

He testified that [REDACTED] had his bank account number, and that she also knew that his pass privileges had been suspended. He stated that he had given passes to [REDACTED] in prior years before they became intimate, and that he gave a pass to her in the spring of 2011 for her aunt to go somewhere. He received this pass from [REDACTED] and believes that it is the pass [REDACTED] used in November but is not sure whether he gave [REDACTED] one pass or two. He is not sure whether [REDACTED] knows [REDACTED], but said that she knew many Southwest employees. He has no idea why [REDACTED] or [REDACTED] would have put [REDACTED] name on a Buddy Pass. He asserted that [REDACTED] could have obtained all the information in her email to the Company from [REDACTED].

[REDACTED] denied that [REDACTED] deposited \$400 into his account between August and November 2011.

█████ bank account records for the period July 27, 2011 through January 26, 2012 were offered in evidence. The account number is the same as shown on █████ deposit record. The account records show a deposit of \$400 on December 28, 2011, in keeping with █████ testimony. There is no other deposit of exactly \$400, despite █████ testimony that she paid \$400 to █████ some time between August and October 2011. However, on August 15, 2011 there were two separate deposits of \$200 each. The records show a number of other deposits of exactly \$200 each: on July 28, July 29, August 18, August 23, and September 6.

Grievant █████ explained that some of these \$200 deposits were loans from his mother, and that others were payments for delivery services by a friend who operates a stereo business.

At the fact-finding hearing on March 6, 2012, the Company provided █████'s email accusing █████'s of selling and offering Buddy passes to her, and the documentation she had provided as well as copies of the Buddy Passes █████ had used in November. █████ denied knowing █████ and admitted receiving \$400 but said that it was a loan to pay bills. He told the fact-finding that he had received the money from a friend of █████ with whom he had been in a relationship, but the relationship had ended. He stated that he had not repaid the loan and believed that █████ and █████ were trying to exact revenge against him.

The Company did not interview █████ as part of its investigation, or after the fact-finding hearing. It did not obtain deposit or withdrawal records with respect to any payment relating to █████ November 20-23 travel. In █████ February 29, 2012 email she offered to get copies of her phone bills to show calls with █████, but the Company did not ask her to provide these records.

The Union offered evidence of an instance in St. Louis involving marital disaffection, where the wife of an employee falsely accused him of dealing drugs, possessing an illegal weapon, and selling Buddy Passes, in an apparent effort to cause his termination. The employee was not disciplined, particularly since he had opted not to receive Buddy Passes.

## **Issue**

The issue, as agreed to by the parties, is whether there was just cause for the discharge, and if not what should the remedy be.

## **Position of Management**

The Company asserts that the Grievant was well aware of the prohibition against selling or attempting to sell Buddy Passes, and the consequences of violating the prohibition. It depicts Grievant █████ as engaging in a "knowing, deliberate and intentional violation" of the policy.

It avers that it fairly and objectively investigated the allegations, obtaining documentation including the Buddy Passes and Cirrus reports, and afforded █████ the opportunity to present his position at the fact-finding.

The Employer maintains that while termination would be warranted even for a first offense, the Grievant's history of pass privilege abuse makes discharge even more compelling.

It characterizes the Grievant's account as lacking credibility. It submits that he provided no evidence (such as an eviction notice) of the financial hardship he claimed, or even that he had ever had a romantic relationship with [REDACTED]. It points to numerous bank deposits by [REDACTED] in the amount of \$200 each, the amount cited by [REDACTED] as his "price" for a Buddy Pass. It contends that if, as the Grievant claims, [REDACTED] and [REDACTED] were conspiring to cause his discharge, it would have made no sense for them to change the name on the Buddy Passes to [REDACTED]. It stresses that the Grievant has an incentive to concoct a story but that [REDACTED], a third party, had no motivation to lie. It cites [REDACTED] lack of any financial incentive in the case.

The Company disputes any claim of disparate treatment. In this regard, it characterizes disparate treatment as an affirmative defense, and the Union's burden. It distinguishes the St. Louis case on the basis that there the allegations were not substantiated. Thus it sees that case as distinguishable. It contrasts another case in which Arbitrator I.B. Helburn upheld the discharge of a ramp agent for selling Buddy Passes.

It regards the policy involved as specific and clear, and it insists that the Grievant knowingly and intentionally violated the policy by selling Buddy Passes to [REDACTED]. It considers his termination as appropriate.

It asks that the grievance be denied.

### **Position of the Union**

The Union states that the Grievant has consistently maintained that he is the victim of a former girl friend. It argues that [REDACTED] thought [REDACTED] was lending him \$400, and did not know at the time that [REDACTED] was the depositor of the money. It views this as the first step in an elaborate revenge plot. It maintains that the Grievant's bank account shows he had little money as of late December, and it considers understandable that he would seek to borrow money from [REDACTED] at Christmas time. It emphasizes that in fact [REDACTED] received no Buddy Passes in December.

The Union faults the Company for not conducting a proper investigation, failing to interview [REDACTED], and it faults Stachowski for not personally interviewing [REDACTED].

It avers that contrary to [REDACTED] testimony, there was no \$400 deposit to [REDACTED] account in August. It opines that the Company should have discovered this during its investigation. It insists that [REDACTED] obtained the Buddy Passes for her November flight from [REDACTED], and not from the Grievant. It submits that [REDACTED] had earlier received these Buddy Passes from [REDACTED] ostensibly for her aunt.

The Union summarizes that the Grievant has consistently held to this account, and it urges that if the Company had investigated thoroughly, it should have sought to verify the accusations against him. It concludes that the Company's case rests on an email that it failed to verify, but simply accepted as accurate. In its view the Company made the discharge decision first, basing the decision in part on his prior pass suspensions, and only then conducted an investigation to support the conclusion already reached. The Union notes that suspension of pass privileges is not discipline and therefore not subject to challenge.

through the grievance procedure. It chastises the Employer for failing to provide requested documents until a subpoena was issued.

It asks that the grievance be sustained and that the Grievant be reinstated and made whole.

## **Analysis and Conclusions**

It is understandable that the Company regards the sale of Buddy Passes as a serious offense. Selling a Buddy Pass enriches the employee, at the expense of the Company. It is only one step removed from taking money out of the cash drawer. In a sense, it is even worse than taking money out of a cash drawer, since the loss to the Company may be greater than the gain to the employee. If in fact [REDACTED] purchased a Buddy Pass from the Grievant and used it for a round trip between Columbus and Las Vegas the week before Thanksgiving, the \$200 she paid the Grievant was probably less than half the lowest fare the Company would have charged for a round trip ticket. So, if an employee sells a Buddy Pass, the Company's loss may be several times the employee's gain. An employee can purchase up to 16 Buddy Passes in a year, and if he or she sells them all, the potential revenue loss to the Company is in the thousands of dollars. Of course, not every passenger who purchases a Buddy Pass would have flown otherwise, and not all those would have flown on Southwest. But at least some would have, and to that extent an employee's sale of Buddy Passes deprives the Company of revenue it should have received.

The ultimate penalty of discharge without prior application of progressive discipline should be reserved for serious offenses. For the reasons set forth in the preceding paragraph, sale of Buddy Passes is such a cardinal offense, and the Company does not exceed the limits of just cause by terminating an employee for a first offense of selling Buddy Passes. At least one prior arbitration decision between the parties treats the sale of Buddy Passes as a dischargeable offense:

The discharge was consistent with discipline imposed not just on similarly situated employees, but also on otherwise valued, long-term employees. The grievant was a short-term employee. His job-related commendations are of no help to him in light of the gravity of his offense.

Arbitrator I.B. Helburn, March 16, 2002 [REDACTED] Grievance).

Further, the Company has clearly communicated to its employees that it considers sale or attempted sale of Buddy Passes to be a dischargeable offense. An employee who sells a Buddy Pass must know that doing so jeopardizes his or her continued employment.

So, if in fact the Grievant sold, or attempted to sell a Buddy Pass to [REDACTED], the Employer had just cause to terminate his employment. This brings us to the factual issue that determines the outcome of this case: whose version should be accepted, [REDACTED] or [REDACTED]??

As stated above, I permitted the taking of [REDACTED] testimony from a remote site by video conference. The implementation was less than ideal. The video portion was a bit jumpy, and the audio was not always clear, so that [REDACTED] had to be asked several times to repeat herself. In addition, the audio and video were not completely in sync: the image of her face on the screen did not always correspond with the words being heard.

One of the factors used in determining credibility is an assessment of the demeanor of witnesses. In this case, [REDACTED] seemed nervous at times, and occasionally chuckled slightly and seemingly inappropriately. These observations do not necessarily mean though that [REDACTED] was dishonest rather than simply nervous. [REDACTED] appeared to be a calm and confident witness, but because of the imperfections in the video conference transmission, demeanor cues as to her credibility were much more difficult to discern. I have decided not to attempt to make any credibility determinations on the basis of witness demeanor, and to rely instead on an assessment of the substance of the witnesses' testimony and the logic and probabilities of their respective versions.

By his own account, [REDACTED] was experiencing financial difficulties. He thus had a motivation to try to obtain extra income. [REDACTED] certainly had no financial stake in this case, unless she were trying to obtain restitution of money she had paid to [REDACTED], which would tend to support her account. [REDACTED], who by both accounts did not know [REDACTED] had no personal motive to falsely accuse him in order to jeopardize his job. If [REDACTED] account is fictional, her only apparent motivation would be to help her friend [REDACTED] exact revenge against [REDACTED] for two-timing [REDACTED]. This scenario seems to me unlikely. First, [REDACTED] would be entering into a conspiracy against someone she did not even know. And perhaps more to the point, [REDACTED] would have had to concoct quite an elaborate ruse to make it appear that [REDACTED] had sold Buddy Passes to [REDACTED]. Most people who would frame someone else are unable to weave such an intricate web, and let inconsistencies or telltale errors slip into their stories, as did the woman who falsely claimed that her estranged husband was dealing Buddy Passes and drugs, when in fact he had declined to receive Buddy Passes.

With one possible exception, the documentary evidence corresponds completely with [REDACTED] account. She did in fact fly as a non-revenue passenger between Columbus and Las Vegas on the dates she claimed, with the companion she identified, as corroborated by the Cirrus records. The Buddy Pass shows that it was issued to [REDACTED] and transferred to [REDACTED]. All of this is also consistent with [REDACTED] contention that the Buddy Passes involved were ones he had given to [REDACTED], and that [REDACTED] in turn gave them to [REDACTED]. On this point, however, [REDACTED] was somewhat self-contradictory as to whether he gave [REDACTED] one Buddy Pass ostensibly for her aunt, or two. Moreover, under [REDACTED] scenario, there would be no reason at all for [REDACTED] and [REDACTED] to add [REDACTED]' name to the Buddy pass. Certainly [REDACTED] and [REDACTED] were not trying to implicate [REDACTED], and it is not clear that [REDACTED] even knew that [REDACTED] was an employee. The one possible contradiction between documentary evidence and [REDACTED] testimony arises from [REDACTED] bank account records. [REDACTED] testified that she paid [REDACTED] \$400 for the two Buddy Passes, somewhere between August and October 2011. [REDACTED] bank account records show no \$400 deposit during this time frame, although they do indicate two deposits of \$200 each on August 15. So, the bank records arguably contradict, but arguably corroborate [REDACTED] testimony.

There is no ambiguity about the December 28 transaction. The bank records clearly support [REDACTED] testimony that she withdrew \$400 from her own account, and deposited \$400 to [REDACTED] account. [REDACTED] own bank account records also reflect this \$400 deposit. In his testimony [REDACTED] explained the deposit as a loan from [REDACTED]. But it makes no sense though that [REDACTED], rather than [REDACTED] would make the deposit to [REDACTED] account. To lend [REDACTED] money, [REDACTED] would simply have deposited her own funds to his account. [REDACTED] testified that [REDACTED] told him that she had deposited money to his account, not that she had someone else do so. But we know that [REDACTED], not [REDACTED], made the deposit. This fact contradicts the Grievant's assertion that the deposit was a loan from [REDACTED].

With some imagination, we could envision that ██████ told ██████ she was putting money into his account, but had ██████ make the deposit instead as part of a set up. But this scenario does not mesh with the rest of the facts. The deposit could not have been part of any revenge plot against ██████: at the time, ██████ and ██████ had not yet had their falling out. By ██████ own words, the deposit was made on December 28, but it was not until January that ██████ angrily accused him of seeing other women. ██████ could not set him up retroactively. Furthermore, according to ██████ ██████ later demanded her money, no ██████ money, back. ██████ account of the December 28 deposit fits; ██████' account does not.

One additional inconsistency further detracts from the credibility of the Grievant's version. At the arbitration hearing, he indicated that he did not know ██████ previously, and learned her name at the fact-finding. But according to Stachowski, the Grievant told the fact-finding that ██████ was a friend of ██████. Even if ██████ and ██████ were conspiring against the Grievant, Stachowski certainly was not.

Some of the facts in this case are proven beyond dispute by documentary evidence (bank records, Buddy Passes, Cirrus reports). There are two competing and contradictory explanations of how those documents came about, and what they mean. In my judgment, ██████ version seems the more plausible explanation. In resolving the credibility issue, I note the irony that the Grievant's defense to a charge that he was cheating the Company is that instead he was cheating on his girl friend.

In summary, I credit ██████ testimony, and I find that the Grievant offered to sell, and did sell, Buddy Passes to ██████.

The Union argues that the grievance should be sustained on the basis of an inadequate investigation by the Company. In this regard, there is no indication that anyone involved in the Company's investigation had any animosity toward the Grievant or was predisposed against him. In essence, the Employer had evidence of a Buddy Pass violation fall into its lap. If the Buddy Pass violation in fact occurred, it would warrant the Grievant's discharge, as discussed above. Of course, the Grievant denied the Buddy Pass violation, and the Company had to make a judgment whether the accusation against him was true. It is not at all surprising that it reached the conclusion that ██████ accusation was true. She had no apparent motivation to fabricate a story, and her account meshed perfectly with the available documentation. The Grievant's explanation, by contrast, seems implausible and unconvincing. The Company found ██████ version of what occurred to be more convincing, and having considered essentially the same evidence (except given under oath) I have reached the same conclusion.

The Union strenuously condemns the Company's failure to interview ██████ during its investigation. But it is difficult to see how doing so would have achieved a different outcome. If in fact ██████ account was truthful, ██████ would have denied giving ██████ the Buddy Passes she used in November, and would have denied that she was responsible for the \$400 deposited into the Grievant's bank account in December. Conversely, if in fact ██████ had enlisted ██████ to help cost the Grievant his job, ██████ would have held to the same story. In all likelihood, if the Company had contacted ██████ it would still have faced the same decision of which of the conflicting stories to accept, except that in this case ██████ story would have been corroborated. Contacting ██████ probably would have made the Company more likely, not less likely, to have discharged the Grievant.

In my view although the Company's investigation was not perfect – and the perfect investigation probably has yet to be conducted – it was sufficient to satisfy any due process requirement that emanates from the contractual just cause provision.

Based on the above, I conclude that the grievance must be denied.

### **Award**

The grievance is denied. Pursuant to Article Twenty Section One (C) of the collective bargaining agreement, the arbitrator's fee and expenses are allocated to the Union.

Issued August 6, 2012

Matthew M. Frankewing