

In the Matter of Arbitration Between:

TRANSPORT WORKERS UNION LOCAL 555

and

SOUTHWEST AIRLINES

DCA-O-1705/22

Termination)

Walt De Treux, Arbitrator

Hearing Date: 9/28/22

Briefs Received: 11/22/22

Decision Date: 1/3/23

Appearances: For the Union – Troy La Mont, *TWU Local 555 Grievance Specialist*
For Southwest – Olga Bograd, Esq., *SOUTHWEST LEGAL DEPARTMENT*

Introduction and Statement of Relevant Facts

On Friday, July 1, 2022, the start of the busy holiday weekend, [REDACTED] Operations Agent for Southwest Airlines, arrived at Reagan National Airport in Washington, DC and clocked in at 4:44am. Six Operations Agents and a trainee were scheduled to work that morning. Unbeknownst to [REDACTED] and three of her co-workers, two Agents had called out of work. As a result of the staff shortage, multiple flights had to be reassigned to the Agents who had reported to work. They learned of the flight reassignments when they logged into their computer workstation in the Operations Agents' break room.

Soon after coming to work at 4:50am, Customer Service Supervisor Laura Padilla walked through the break room and greeted Operations Agents [REDACTED] and [REDACTED]. Moments earlier, she saw Operations Agent [REDACTED] in the Operations Supervisor's office. Padilla stayed in the break room for about five minutes. When she returned to her office, all four Operations Agents called within 60-90 seconds of each other and reported

that they were going home sick. ██████ clocked out at 5:16am. █████ █████ and █████ clocked out at 5:18am.

Customer Service Supervisor Chemere Wallace (nee Barry) contacted the Supervisor of Dispatch and the Airport Manager to report that flights would be delayed due to the absence of all scheduled Operations Agents. Wallace and another supervisor stepped in to coordinate the flights and assist with boarding. The airline called in other off-duty Operations Agents, some from other airports. Of 45 scheduled flight departures, only four left on time. Southwest declared a “State of Operational Emergency” that, *inter alia*, severely restricted the ability of employees to call off and required mandatory overtime.

After leaving work, █████ went home to rest. Around noon, she went to an urgent care facility to get a COVID test, which was negative. She returned to work the next day with a doctor’s note excusing her from work on July 1. She worked double shifts on July 2, 3, and 4.

The following week, the Company conducted an investigation, including a fact-finding session on July 11, 2022. On July 15, 2022, the Company terminated █████ for dishonesty, falsifying a claim for sick leave, unbecoming conduct, and abuse of sick leave. █████ timely grieved her termination. The parties were unable to resolve the grievance through the contractual steps and referred the matter to arbitration. On September 28, 2022, a hearing was held at the Doubletree Hotel in Dallas, Texas, during which time both parties had a full and fair opportunity to present documentary and other evidence, examine and cross-examine witnesses, and offer argument in support of their respective positions. The parties filed post-hearing briefs and submitted the matter to the Arbitrator for a decision.

Issue

The parties stipulated to the following issue,

Did Southwest Airlines have just cause to discharge Grievant [REDACTED]? If not, what shall be the remedy?

Relevant Contract Provisions and Company Policies

**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. ...
- C. **Cost of Arbitration.** It is understood and agreed that the cost of arbitration shall be borne by the losing party.
- L. **Interpretation/Application of Agreement**

15. **Arbitration/Function and Jurisdiction.** ...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 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.

**ARTICLE TWENTY-THREE
ATTENDANCE**

- A. **Purpose.** The Company and the Union recognize that habitual absenteeism and tardiness adversely affect operations and morale...Using sick leave or sick pay for a purpose other than that intended constitutes abuse. Abuse of sick leave or sick pay shall warrant immediate termination.

GROUND OPERATIONS EMPLOYEE HANDBOOK

3.2 Basic Principles of Conduct

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.

13. Act of theft or dishonesty, including knowingly presenting to the Company falsified documents.

17. Falsification of any Company records including, but not limited to...claim for sick leave or sick pay...

25. Southwest Airlines does not want to interfere in the personal affairs of Employees, however, conduct on or off the job which is detrimental to the Company's interest including unacceptable or immoral behavior on Company property or any adverse conduct that reflects on the Company, whether on or off duty, may be cause for immediate dismissal.

Analysis and Decision

Southwest maintains that Grievant, in concert with three other Operations Agents, left work at the start of her shift due to the heavy workload resulting from the absence of two other Operations Agents. The Company maintains that Grievant was not sick, and therefore, abused sick leave in violation of Article 23.A. of the collective bargaining agreement. It also charged her with violations of the Basic Principles of Conduct related to dishonesty, falsely claiming sick leave, and conduct unbecoming. It terminated Grievant in accordance with the penalty mandated in Article 23.A. for abuse of sick leave.

The Union argues that the Company's case relies solely on circumstantial evidence and falls short of proving that Grievant was not sick or that she left worked in concert with her co-workers. The Union contends that Grievant submitted a doctor's note that complied with the

contractual guidelines for submitting such a note. Grievant insists she was not feeling well when she reported to work and left when her symptoms worsened. She denied talking to any of her co-workers about leaving work or knowing that they too were clocking out early.

The Company's case does rely on circumstantial evidence. It can meet its burden of proving just cause for discharge if that evidence, considered in its entirety, leads to one reasonable conclusion. In the present case, I find that the evidence, taken as a whole, leads to one reasonable conclusion, i.e., that Grievant left work early either out of frustration or protest over the increased work load and did so in concert with the other Operations Agents. A review of the relevant facts confirms such a finding.

Grievant reported to work at 4:44am. She logged on to computer workstation, where she would learn that two other Operations Agents had called out and some of their flights had been reassigned to her. Customer Service Supervisor Padilla came into the break room, greeted the Operations Agents, and stayed for about five minutes. Grievant did not tell Padilla that she was feeling sick even though Padilla is one of the supervisors to whom she would report that information. None of the four Operations Agents gave Padilla any indication that they were ill. As soon as Padilla returned to the Operations Supervisor office, all four Operations Agents called the office in the span of 60-90 seconds to advise that they were leaving work early. According to Grievant, she did not know any of the other Agents were leaving early. Yet, three of the Agents¹, all in the same office, used the same phone in that 60-90 second span to report on their early exit. Although Grievant was seated next to [REDACTED] and in the same office with the other Operations Agents, she testified that she did not tell any of them she was feeling sick

¹ One Agent used a phone in an office adjacent to the break room.

and had to go home. [REDACTED] clocked out first at 5:16am. Grievant admitted seeing [REDACTED] on the ramp, but she denied knowing that he had clocked out and was leaving work. Grievant and Operations Agents [REDACTED] and [REDACTED] all clocked out at 5:18am, yet Grievant claims she did not know they were leaving work and did not discuss it with them. She testified that she saw [REDACTED] at the time clock, but did not know why he was there.

To refute the reasonable conclusion that Grievant left work due to the increased workload and in concert with her co-workers, one would have to believe the Grievant and the other Operations Agents were simultaneously and suddenly stricken with illness soon after starting work and moments after their supervisor left the break room. One would have to further believe that the Operations Agents did not tell each other of their sudden illnesses or that they would be leaving work; that three of the Agents made calls on the same phone in the same office yet did not know or discuss what each were doing; and that they all clocked out within 2 minutes of each other (with three Agents clocking out in the same minute) yet not discussing or knowing what each other were doing. The scenario of all the Operations Agents simultaneously getting sick and independently making calls and clocking out without even a hint of discussion between them is simply not plausible.

The Union argued that Grievant's doctor verified her illness. He did not. Grievant went to urgent care and received a COVID test. In his note, the doctor did not state Grievant was ill. Rather, he wrote, [REDACTED] was seen at MedStar Health Urgent Care...Please excuse her from work and/or school on 07/01/22." The fact that she was "seen" at urgent care does not establish that she had any symptoms of illness. At hearing, the Union submitted a "Final Report" from urgent care (that was not previously provided to the Company) that indicated

Grievant's COVID test was negative. The instructions from the doctor advised that a second, more reliable test was sent to a commercial laboratory with results available in up to 5 days. He recommended that Grievant "self quarantine until your results are back." Despite Grievant's expressed fear of COVID and the recommendation of quarantine, she returned to work the following day and worked three consecutive double shifts. Grievant defended her return to work, asserting that her symptoms resolved in the evening following her early exit from work and several hours after she left the urgent care facility. Again, the scenario painted by Grievant is not plausible. If she had a fear of COVID and her symptoms grew worse in the early morning of July 1 and prompted a visit to urgent care in the early afternoon, it is unlikely that those symptoms would resolve so quickly and completely that she would ignore her doctor's quarantine recommendation and return to work the next day and to work three consecutive double shifts.

The one reasonable conclusion to be drawn from the evidence², taken as a whole, is that Grievant, in concert with the other Operations Agents³, decided to leave work early once she learned of the increased workload. Her claims of illness are not credible. Her assertion that she did not discuss her early exit with her co-workers or know that they were also sick and leaving early is simply not plausible. Her actions in falsely asserting illness and claiming sick leave for "a purpose other than that intended" rises to the level of sick leave abuse. Her conduct and that of her co-workers caused considerable flight delays and workforce disruptions

² The Company offered evidence through Supervisor Wallace that certain Ramp Agents and a supervisor appeared to know of the Operations Agents' plan to leave early and that it may have been discussed in a group chat the previous evening. Due to the hearsay nature of the evidence, it is not credited or considered in this Decision.

³ The Company terminated [REDACTED] and [REDACTED] [REDACTED] did not return to work after the incident.

during one of the year's busiest travel weekend. Article 23.A. mandates "immediate termination" for sick leave abuse, indicating the parties' recognition of the seriousness of the offense. Grievant has not offered any reasons to mitigate the contractual penalty.

For these reasons, I find that Southwest Airlines had just cause to discharge Grievant

██████████

Award

The grievance is denied. Pursuant to Article 20, Section 1(C), the Union shall bear the fees and costs of the Arbitrator.

Walt De Treux

WALT De TREUX