BEFORE

DR. A. DALE ALLEN, JR.

IMPARTIAL ARBITRATOR

In the Matter of Arbitration between:	)AAA Case 71 300 00267 96
	)
Southwest Airlines Company	)Ramp Agents Working in
Dallas, Texas	)Freight Facilities
	)
and	)
	)
Local 555	)
Transport Workers Union	)

OPINION AND AWARD OF THE ARBITRATOR

April 4, 1997

ARBITRATION AWARD

In the Matter of:

Local 555
Transport Workers Union

and

Southwest Airlines Company
Dallas, Texas

FOR THE UNION:	Garry Drummond International Representative
FOR THE COMPANY:	Ruth S. Landau Labor Counsel
IMPARTIAL ARBITRATOR:	Dr. A. Dale Allen, Jr. Hankamer School of Business Baylor University—Box 8006 Waco, Texas 76798

By the terms of the agreement between Local 555 of the Transport Workers Union, hereinafter referred to as the "Union," and Southwest Airlines Company of Dallas, Texas, hereinafter referred to as the "Company," pursuant to provisions of Article 20, Dr. A. Dale Allen, Jr., Baylor University, Waco, Texas, was selected by the parties to serve as impartial arbitrator. A hearing was held at the Company's facility in Dallas, Texas, on February 7, 1997. Full opportunity was afforded the parties for the introduction of evidence, examination and cross-examination of witnesses, and oral arguments. Upon receipt of post-hearing briefs from both parties, these proceedings were declared closed on March 7, 1997.

ISSUE

Is the grievance timely and properly before the Arbitrator? If so, has the Company violated the parties' collective bargaining agreement by assigning Operations Agents/Freight Agents to perform job duties which should have been performed by Ramp Agents? If so, what is the appropriate remedy?

STATEMENT OF GRIEVANCE

"Management allowing Operation Agents and Operation Supervisors to perform job duties otherwise described for Ramp Agents, including but not limited to those duties described in Article Five (5), Section One (1), Paragraph D,E,F, & G. A reasonable amount of Ramp Agents to be placed in all Southwest Airlines Freight Facilities to perform duties described above."

PROVISIONS OF THE LABOR AGREEMENT

Article Two. Scope of Agreement

G. Freight Facilities. . . . the Company shall establish and maintain a separate bid location for Freight Agents within the Operations Agent classification . . .

Article Five. Classifications

Section One—Ramp Agent/Provisioning Agent. The work of Ramp and Provisioning Agents includes the functions which have been historically performed by such agents at Southwest Airlines stations and includes, but is not limited to, any or all of the following work . . .

D. Warehouses, weighs, stacks, picks up, and delivers air cargo . . .

Section Two—Operations Agent/Freight Agent. The work of an Operations Agent includes the functions which have been historically

performed by Operations Agents at Southwest Airlines stations and includes, but is not limited to, any or all of the following work . . .

L. Checks cargo on hand to see that it is properly logged and accounted for; completes airbills, verifies shipments; accepts and accounts for payment.

Section Three—Cross-Utilization. It is mutually understood and agreed that under normal working conditions, Ramp Agents shall perform Ramp Agent duties; . . . and Operations Agents shall perform Operation Agent duties; however, cross utilization shall be allowed when sufficient personnel of a specific job classification are not available. . . .

Article Six.

Section One—Hours of Service. . . .

D. Work Schedule Bids/Requirements. . . . Bids for positions in Air Freight shall be held once every six (6) months. Agents bidding Air Freight must remain in Air Freight until the next Air Freight bid . . .

Article Twenty. Grievance/System Board/Arbitration . . .

Section One Procedures . . .

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

E. Time Frames. It is expressly understood and agreed that, if any of the time frames set forth in this Article are violated . . . by the Association, the grievance shall be considered withdrawn. . . .

PROVISIONS OF WORK RULES INTERPRETATIONS OF JANUARY 1996

4. Q. Are Ramp Agent assignments to include Freight Facilities, and what are their job duties to include?

   A. Yes, where Southwest Airlines operates a separate Freight location, the Ramp Agents shall be assigned to assist in the Freight Facilities as outlined in Article Five, Section One, Subparagraph D.

5. Q. Will Ramp Agents be allowed to bid shifts at the Freight Facilities?

   A. No, just as other job duties, the Ramp Agent duties will be assigned, i.e., gate lead, transfer driver, T-point, etc. However, if the Freight Facility size and volume merits an agent full time, it might be advantageous to allow a bid to take place, but only by local agreement.

6. Q. How many Ramp Agents will be placed in the Freight Facilities?

A. There will be no set number of Ramp Agents in any Freight location. The size and volume will determine the number of agents that will be assigned. It is the intent of the Association and the Company to insure that Ramp Agent assignments shall include Freight Facilities.

POSITION OF THE COMPANY

Arbitrability Issue—The Company contends that the Union's grievance was not filed in a timely manner. Hence, per provisions of Article 20, Section 1E, the untimely grievance must be considered as withdrawn. Basically, the Company argues that there has been no "occurrence" that is a basis for a grievance. Firstly, there has been no change in Company policy or application regarding the manner in which freight facilities have been staffed for many years. Secondly, during the most recent collective bargaining negotiations which ended in late 1995, the subject of who works in the freight facility was not even a topic of negotiations. Thus, given no change in the collective bargaining agreement, or in the long past practice for staffing freight facilities, and further given that there has never been any prior grievance regarding this staffing question, the Company contends that the grievance is not close to being timely and should be rejected based on lack of arbitrability. (See Bahlsen Inc., 99 LA 515; Joy Manufacturing Co., 44 LA 469; and Stanley Aviation Corp., 26 LA 393).

Merits—In the introductory sentence of Article 5, Section 2, one reads that the duties of an Operations Agent (OA) include all those "historically

performed." All the Union witnesses admitted that for many years, OAs have historically performed all of the work in freight facilities, including the moving of inbound and outbound packages to and from the staging area for pickup by a Ramp Agent (RA). In addition, there is no dispute that the labor agreement, in Article 2, Section G, specifically states that manning freight facilities is a bid position only "for Freight Agents (FA) within the Operations Agent classification."

In sum, there can be no question that both contract language and a lengthy past practice history indicates that the work performed in freight facilities basically belongs to OA/FAs. It has further been the practice to call in RAs to assist with freight when there is an overload which the FAs cannot handle alone. To be sure, to a certain extent, the work duties of FAs and RAs overlap, but the primary work in the freight facilities has always been within the province of OA/FAs. Indeed, the Company has no objection to RAs working in the freight facility on an "as needed" basis. In fact, in some high-volume locations such as Dallas, RA "runners" are assigned to work freight on a full-time basis to transport freight back and forth between the freight facility and the terminal. In those high-volume locations, it is true that RAs will assist inside the freight facility as well when needed. However, they are not to replace the FAs who are permanently assigned to freight work per the labor agreement.

It would be very costly and inefficient to place an additional person, a full-time RA, in all 38 locations where the Company operates a freight facility—in the great majority of the situations, the RA would be sitting idle a good portion of the

time. Vice President of Ground Operations Jim Wimberly estimated that it would cost the Company an additional five million dollars per year to add the RA staff the Union's grievance demands. Such additional labor costs could render the freight portion of the Company's business as becoming unprofitable.

Most of the Union's position centers around a Work Rules Interpretation agreement entered into by the parties on January 29, 1996. Such Interpretations have been used by the parties for many years to help clarify questions that often come up regarding contract language. These Interpretations in no way alter or modify the labor agreement provisions as the Union readily agrees. Hence, these Interpretations cannot be relied upon to change the collective bargaining agreements provisions, or the lengthy past practice, regarding the assignment of freight work. Aside from that fact, the Company contends that nothing in these Interpretations mandates that management place full-time RAs in the freight facilities. Indeed, the responses to questions 4, 5, and 6 indicate that RAs cannot bid shifts in freight except by local agreement, and that RAs will be utilized in freight facilities as needed to "assist" FAs, depending on the size and volume of freight work to be performed. Moreover, answer #6 clearly states that there "will be no set number of Ramp Agents in any Freight location."

In summary, the Company contends that the grievance should be dismissed as being untimely. However, should the Arbitrator conclude that the grievance is subject to arbitration, then the Company would argue that the

evidence clearly demonstrates that the Company has not violated the parties labor agreement or historical past practice.

POSITION OF THE UNION

Arbitrability Issue—The Union vehemently contends that the timeliness question now put forth by the Company was never raised at any point prior to the arbitration hearing. The Union argues that the grievance is timely in that it relates to the Company's unwillingness to allow RAs to perform the contractual duties specified in Article 5, Section 1D, as those duties are performed in freight facilities, especially as clarified by the January 1996 Work Rules Interpretations. That is, when it became obvious that the Company was not going to honor the Interpretations, the Union filed its grievance in a timely fashion to get the Interpretations and labor agreement language enforced. Hence, an arbitration ruling is necessitated to resolve this issue.

Merits—It is the Union's basic contention that the Company is in violation of the collective bargaining agreement by assigning OAs and OA Supervisors to perform job duties in the freight facilities that, contractually, belong to RAs as specified in Article 5, Section 1D—weighing, stacking, picking up, and delivering air cargo. When OA/FAs move freight around inside the freight facility, they are performing the contractual job duties of RAs and it is a violation. There is no dispute that OAs are, in fact, moving freight from where the customer brings it in to be paid for, airbilled, etc., to the staging area where RAs pick it up to be

transported to the terminal. On the whole, the Union is not trying to tell the Company how many RAs are needed to staff the freight facilities, but when RA work is being done, it must be performed by RA personnel and not by OAs. In whatever manner the Company wants to assign the RAs to get that RA work done properly is up to the Company—it is a management right. However, management does not have a right to assign RA functions to OA personnel.

This issue is not new—it was the subject of previous grievances which were settled by negotiating the January 29, 1996, Work Rules Interpretations. The settlement regarding question #4 was that RAs would be assigned to freight facilities and would do the duties outlined in Article 5, Section 1D. The Company has continued to assign that work to OA/FAs inside the freight facilities in spite of the Interpretations agreement. Regarding answer #5, it is true that RAs cannot contractually bid shifts at freight facilities, except by local agreement. However, RAs can and should be assigned to work in freight facilities whenever RA contractual duties are being performed therein.

Looking to question #6, Union Vice President Gary Shults indicated that it was the parties' intent "absolutely" to assign an RA to a freight facility if one existed. Due to the timing of the bidding process, the Union waited until six months after the Interpretations were signed, and it became obvious that management was not going to implement the Interpretations system-wide, before the grievance was filed. Indeed, in its response to the instant grievance filed in Kansas City, the manager indicated that management would provide for an RA

assignment in freight on its September 1996 bid. This was not done and, to date, no RA has been assigned to the freight facility in Kansas City.

In summary, the Union does not dispute that "historically" FAs have been assigned to perform all of the duties in the freight operation. However, that was to be rectified by the January 1996 Work Rules Interpretations so that the contractually defined duties which belong to RAs would be performed by RAs in the freight areas as well. In addition, the Union would argue that past practice cannot be allowed to override that clear provisions of Article 5, Section 1D. Therefore, the Company is in violation of both the labor agreement as well as the negotiated Interpretations.

POSITION OF THE ARBITRATOR

Arbitrability Issue—The undersigned has concluded that the Union's grievance is timely and properly subject to arbitration for a decision on the merits. For one thing, the Company did not raise the arbitrability issue prior to the arbitration hearing. Most arbitrators consider this as rather "suspect"—normally a significant arbitrability question would be lodged early in the grievance process.

Secondly, while it is true that nothing has changed regarding past practice or the negotiated language of the parties' collective bargaining agreement, the January 29, 1996, Work Rules Interpretations agreement was the impetus for the filing of the instant grievance. Evidently, due to a bidding procedure, the

Union waited for the new bids to come out to see what would happen. When the Union perceived, in its view, that the Company had not enacted any changes in freight staffing based upon the Interpretations, then a timely grievance was filed at that point. Thus, there was a legitimate "occurrence" which led to the filing of the grievance, and it was done in a timely manner. Therefore, this grievance is properly before the Arbitrator for a decision regarding the merits of the dispute.

Merits—This has been a rather complex issue to resolve. Both parties presented meritorious cases. However, the Union bears a heavy burden of proof in this dispute in the face of labor agreement language and a lengthy past practice which clearly favors the Company's position. In the final analysis, the undersigned has concluded that the evidence offered by the Union is not significant enough to order sweeping changes in freight staffing throughout the entire Company system. Indeed, this neutral tends to favor the Company's version of the intent behind the Work Rules Interpretations when considered in light of past practice and what is in the labor agreement. As stated, the scope of the Union's position is too broad-based and general. That is, it may be that at a given local freight operation, there may come a point in time when the work load merits having an RA assigned full-time to perform the RA functions enumerated in Article 5, Section 1D. Indeed, that has already happened in some locations such as Dallas, St. Louis, and Phoenix where RAs are "dedicated" solely as freight runners, and also assist inside the freight facility itself, working alongside

OA/FAs as the volume demands it. Thus, it becomes a local issue just as the answer to question #5 of the Interpretations directs.

Collective bargaining agreement provisions heavily favor the Company's position. Article 2G establishes contractually that Freight Agent is a "separate bid location . . .within the Operations Agent classification." This housing of basic freight work in the OA/FA classification is further established by the fact that Article 5, Section 2, is titled "Operations Agent/Freight Agent" while Section 1 is labeled "Ramp Agent/Provisioning Agent." The opening paragraphs of these sections, in essence, speak of the importance of "historically performed" functions within each classification. It is uncontested that the work performed inside the freight facility has "historically" been the province of OA/FAs.

Part of the reason for the development of this dispute seems to stem from the fact that, historically, there has been some degree of overlapping duties between the two classifications. Indeed, "cross-utilization" of duties is permitted under Section 3 of Article 5 "when sufficient personnel of a specific classification are not available." Hence, it is undisputed that, for many years, FAs have been allowed to move packages around inside the freight facility, primarily moving freight to the staging area to be picked up by RAs for transport to the terminal gates. Likewise, RAs have been permitted to work inside the freight areas assisting FAs when the need arose because of increased volume, etc. The issue of "overlapping responsibilities" is not an uncommon area of dispute in arbitration cases. Arbitrators have often ruled that where overlapping duties and

responsibilities have been the historical practice, that past practice cannot suddenly be altered except by specific mutual agreement of the parties. Hence, the "overlapping duties" aspect of this dispute tends to also favor the Company's position herein.

In sum, both the language of the collective bargaining agreement and the lengthy historical practice heavily favors the Company's position. Thus, we must examine the Work Rules Interpretations to determine if the language therein is strong enough to modify or "clarify" labor agreement provisions and past practice to the degree desired by the Union. The Union readily agrees that, in fact, these Interpretations do not rise even to the level of a side agreement change or modification—they are only clarifications to demonstrate how to interpret the labor contract. Nonetheless, if these Interpretations clearly supported the Union's argument herein, they would have to be enacted. That is, parties do not negotiate such documents with the intent that they would have no meaning or effect.

The response to question #4 indicates that RAs are to be "assigned to assist in the Freight Facilities," presumably to assist FAs which is the contractual bid position in freight operations. RAs are to assist with the duties outlined in Article 5, Section 1D, because historically that work has been done by FAs within the freight facility itself. Though not specifically addressed in this question and answer, presumably RAs may also assist in performing the duties

historically and contractually associated with FAs when the need arises. This would be in keeping with the cross-utilization language of Article 5, Section 3.

Turning our attention to question #5, both parties agree that it was not the intent of the Interpretations to substitute RAs for FAs in the freight operation—that would be a violation of the bid procedure found in Article 2G. On the other hand, if freight volume at a given location grows to the point where it would make economic sense to bid an RA position on a full-time basis, then this Interpretation allows that to be done, but only by "local agreement." Obviously, this emphasis on the "local agreement" was intended to make this a location-by-location decision rather than a system-wide application at every location, irrespective of size and volume of freight. This strongly supports the Company's position in the instant dispute.

The answer to question #6 seems to "hitchhike" on the question #5 response. Thus, the "will be no set number of Ramp Agents in any Freight location." Rather, "the size and volume will determine the numbers of agents that will be assigned." As the Union points out, that response goes on to state that it is the parties intent that RAs work assignments shall include freight facilities. In the total context of that answer, plus the one to question #5, plus labor agreement language and past practice, one must conclude that the overall intent of the Interpretations was to state that when the volume of freight work at a given location reaches a point where it becomes efficient and cost-effective to assign an RA to full-time work in the freight operation, then by local agreement

that can be done. However, the undersigned cannot magnify that intent into one whereby the Company is compelled to place RAs in freight operations throughout the entire system, irrespective of volume, merely because some portion of the work done by FAs inside the freight area may overlap with duties spelled out in Article 5, Section 1D. Again, both the labor agreement and historical past practice have permitted overlapping duties and responsibilities between OA/FAs and RAs. The clarifications intended by the January 1996 Interpretations are not powerful enough to override labor agreement language and the lengthy past practice.

Nevertheless, as stated supra, there was some purpose behind the negotiation of the Interpretations. If the Union concludes that at a given location the level of freight activity reaches a volume where a full-time RA is justified, then that issue can be addressed with local management and grieved if necessary. (For example, in Kansas City, management offered what it believed to be a "reasonable amount" of RA assignment in the freight facility, but it was rejected by the local Union). However, the "system-wide" nature of the instant grievance cannot be upheld.

The undersigned needs to briefly address the issue of payment of the Arbitrator's expenses. Article 20, Section 1C, states that "the cost of arbitration shall be borne by the losing party." While the "bulk" of this opinion and Award favors the Company's position, it is not a total "loss" for the Union. Even though there is no award for the Union immediately forthcoming from this arbitration

decision, the Arbitrator has concluded that there is some meaning and purpose behind the Work Rules Interpretations; i.e., these Interpretations are a vehicle for the Union to "police" the local freight operations and to raise a question with management in the event that volume at a given local freight facility reaches the point where a full-time RA might be justified. Consequently, to that limited extent, the Union was victorious. Therefore, the payment of the Arbitrator's costs will be "fashioned" to reflect the fact that while the Company was the primary "winner," the Union reaped some "positives" from the decision as well.

AWARD

The Union's grievance is timely and subject to arbitration. However, at this point in time, there is no evidence that the Company is in violation of the collective bargaining agreement by the manner in which it has assigned Operations Agents/Freight Agents to perform job duties in the freight facilities. As explained above, based upon the Work Rules Interpretations of Janaury 29, 1996, this is a question that must be examined and settled via local application, rather than via a sweeping, system-wide resolution. Based upon reasoning offered in the final paragraph of the Opinion section supra, the Union is to pay two-thirds of the Arbitrator's costs and the Company is to pay the remaining one-third, as will be reflected in the Arbitrator's Statement of Charges. Any unresolved differences regarding interpretaion or application of this Award will be settled by the undersigned upon written request of the parties.

A. Dale Allen Jr.

Dr. A. Dale Allen, Jr.

Impartial Arbitrator

April 4, 1997