

ARBITRATOR'S OPINION AND AWARD

In the Matter of Arbitration Between:

April 9, 2012

SOUTHWEST AIRLINES COMPANY

and

TRANSPORT WORKERS UNION OF AMERICA, AFL-CIO
Local 555

Group Grievance 5000, Plane-Side Scanning

Before

Elizabeth Neumeier, Arbitrator

Representing:

The Employer: [REDACTED], Southwest Airlines Co.

The Union: Jerry McCrummen, Vice President, TWU Local 555

Statement of the Award:

The grievance is sustained. The Company is directed to cease and desist from unilaterally implementing plane-side scanning until the completion of Section Six negotiations pursuant to the provisions of the Railway Labor Act.

BACKGROUND

Southwest Airlines Company and Transport Workers Union Local 555 are parties to a collective bargaining agreement (CBA) effective July 1, 2008 through June 30, 2011. Pursuant to Article 29, Duration and Amendments, the “entire Agreement shall remain in full force and effect as of the date of ratification through and including June 30, 2011, and thereafter shall be subject to change as provided in Section Six of the Railway Labor Act, as amended.”¹ The Union provided the Company with a “Section Six notice” and, therefore, the terms and conditions of employment for this bargaining unit continue to be governed by that CBA while the parties negotiate over proposed amendments.

This case arose when the Company decided to implement use of a new Plane Side Commodities Scanning (PSCS) system. The Ramp Agents would be required, for the first time, to use a device to scan each bag as it was being loaded onto the aircraft. The device would thus capture, in real time, precisely which bags are loaded into each bin. That information would be transmitted, electronically, to the Operations Agent. The Ramp Agents would no longer manually record on the Cargo Bin Loading Schedule (CBLs or bin slip)² the information about the bags, freight, etc., they load onto the plane and would no longer manually transmit the CBLs to the Operations Agent. Such a system would reduce the likelihood of errors and inaccuracies that sometimes result in agents being disciplined by the Company and airlines being fined by the FAA.

██████████, Vice President–Ground Operations, notified Local 555 President Chuck Cerf of this decision by Memorandum dated October 5, 2011. That Memorandum states, in pertinent part:

Thank you again for taking more time to continue our discussion around the testing and implementation of planeside commodities scanning.

Southwest Airlines continually evaluates processes and procedures. One such area is our Federal Aviation Administration (FAA) approved weight and balance program, which include extensive manual processes and procedures. Last September 2010, the FAA conducted an audit of several process/procedures within the weight and balance program and found some inaccuracies. Southwest Airlines, with FAA oversight, implemented additional

¹Section 6 of the Railway Labor Act provides, in part, “In every case where such notice of intended change has been given, ... rates of pay, rules, or working conditions shall not be altered by the carrier until the controversy has been finely acted upon....”

²The format of the CBLs has changed over the years and those changes were not negotiated.

controls and manual audits to resolve those findings. In addition, we shared our plan for implementing planeside commodities scanning and have been working with FAA on developing this process and technology.

As you know, we have been working on a way to allow a seamless transition of this scanning technology into our operation. Our goal is for this technology to allow Southwest Airlines to maintain and build on our current Safety Culture while enhancing accuracy.

We have tested the scanning device in several cities and received Employee feedback. We have used the feedback to make the process user-friendly for our Ramp Agents, all the while keeping you advised of the ongoing progress.

Now we are on to a larger scale test in Tampa which we plan to begin around November 1, 2011. We anticipate that the test phase in Tampa will ultimately roll into regular production in everyday use there, with a full systemwide rollout in early 2012. The schedule for the systemwide rollout is still being established.

Bottom line, planeside commodities scanning will provide better tools for our Employees, enhance our procedural compliance, and enrich our long-standing Safety Culture at Southwest Airlines. [JX 3.]

In response the Union filed the following group grievance on October 14, 2011:

Statement of Grievance:

The Union hereby grieves the Company's unilateral implementation of plane-side scanning, as indicated in Vice President-Ground Operations [REDACTED]'s letter dated October 5, 2011, in which it was stated the intent to implement a "system-wide roll out" of this program in early 2012. The Company attempted to negotiate this during the 2008 CBA negotiations. It should continue to be subject to Negotiations. The Company's actions are in violation of (but not limited to) Article Two and Article Five.

Remedy or Settlement Sought:

Cease the unilateral implementation of plane-side commodities scanning, as indicated in the letter dated October 5, 2011. The Union also seeks that the changes referenced above be negotiated

in Collective Bargaining, which is currently taking place. [JX 3.]

On October 27, 2011, [REDACTED], Director Employee Resources denied the grievance stating:

The Company's position is that plane-side scanning gives the Agents another tool to use to ensure accuracy while they perform their same functions along with maintaining the safety of our current weight and balance program. This new tool does not violate the CBA, therefore, we respectfully denied the grievance. [JX 3.]

The Union appealed this denial to the System Board of Adjustment and the parties subsequently agreed to proceed directly to arbitration. The parties stipulated that there are no arbitrability or other procedural issues and that this case is properly before the undersigned arbitrator for a decision. Witnesses were sequestered and admonished not to discuss their testimony with other witnesses. A transcript was taken and the parties filed post-hearing briefs.

The different types of commodities carried on the Company's aircraft include passenger bags, heavy bags, cargo, hazardous materials, mail, and Company material (comat). Passenger bags that are checked pass through TSA screening and then to the Company's transfer point (T-point), the baggage makeup area local to that city, for distribution to the correct plane. Bags of continuing passengers, "through" bags, would have gone through a T-point at the originating station and been entered into the transfer report. Gate- or jetway-checked bags also are placed directly on the plane without passing through T-point, as do inbound transfer commodities. Therefore, scanning or counting bags at T-point will establish how many of the bags checked at the counter made it through TSA to T-point, but would not account for all of the bags on the plane, or for all other commodities.

Vice President [REDACTED] testified that the Company was introducing a new baggage handling system through TSA's baggage screening and found baggage performance declining. The Company's Safety and Security Department audits of weight and balance procedures and compliance with those procedures was showing a higher propensity for errors due to the manual process in use. Shortly after the audit, the FAA completed an element performance inspection (EPI) at three stations, found similar errors involving loading schedule errors, and concluded it was a systemic issue. By letter dated September 14, 2010, the FAA required a Company response within 20 days with mitigating actions. (CX 1) The FAA accepted the Company's three-step mitigation plan that was manual and audit intensive. [REDACTED] explained that the plan did not mention plane-side scanning because it was not possible to have the technology up to speed and implemented in the three-month time frame acceptable to the FAA. Subsequent FAA inspections found additional incidents of loading schedule errors, some of which were revealed to be employee error, but the Company was never fined. A large number of grievances filed over employees being disciplined led to the creation of a joint labor-management committee.

On cross examination [REDACTED] acknowledged that the three-step mitigation plan approved by the FAA did not include electronic scanning. He agreed that the FAA did not issue a directive to do plane-side scanning and that the Company must obtain their approval to use it for weight and balance.

[REDACTED] further testified that, following conversations with the FAA about the overall development and design of the plane-side scanning plan, on September 19, 2011, the Company provided the FAA was a detailed analysis of the PSCS. The letter describes the goal as follows:

This project enables Southwest Airlines to transition the current form WN-214, *Cargo Bin Loading Schedule* (CBLS) into an electronic CBLS (eCBLS) which can be archived. As noted, manually counting commodities planeside, detailing the paper CBLS in the outside environment, then having Operations Agents transferring this data manually to the Electronic Weight and Balance (EWB) application has its challenges. [CX 1.]

The letter then described the elements of the program, testing, training, and controls. Wahlenmaier testified that the FAA had stepped up overall enforcement regarding weaknesses in and failure to follow weight and balance procedures. However, in any event, the Company has a responsibility to mitigate risks down to its lowest level and to constantly evaluate whether changes are working.

Under the current system the Operations Agent gives the Ramp Agent the CBLS showing what is coming off the incoming flight and what freight has been manifested so they can set up the gate. The Operations Agent may also tell the Ramp Agent to hold off on loading freight if there is a possibility of exceeding maximum gross weight. The Ramp Agents then are responsible for counting bags as they are loaded and which bin they are loaded into. The Lead Agent is responsible for obtaining that information from the Ramp Agent loading the other bin, manually completing the CBLS detailing what is loaded in each bin, and submitting it to the Operations Agent. It is important that the information be accurate for weight and balance purposes and the Operations and Ramp Agents communicate to that end.

The Company had initiated a project to track the time it takes for a bag traverse through the baggage handling systems from when a customer checks a bag at the ticket counter. That information was to have helped in the design of a Ramp Suite system so as to load the aircraft taking into consideration downline cities, thus gaining efficiencies in downloading and uploading the aircraft. The system could also help achieve a better center of gravity on the aircraft, thus allowing the aircraft to fly more efficiently and save fuel. Ramp Suite was designed to improve commodities handling through three components. First, the Load Planning System (LPS) would be an automated system to assign all commodities accepted for a flight to a specific location within a specific bin. Second, all bags would be scanned at T-point to a cart for distribution, system-assisted rerouting of bags, printing of stickers for rerouted bags, and scanning of all carts as they depart T-point. Third, a Ramp Self Service (RSS) computer device

would be located on the ramp to view and print all flight activity for the station and all reports for agent activities, to edit and submit the electronic version of the CBLS, and to reroute any mishandled bags and print stickers for such bags.

██████████, Senior Director of Change Management for Ground Operations, testified that all three elements of Ramp Suite were necessary to achieve maximum effectiveness. The Company decided to roll out the LPS in advance of the development of the other two elements because they were not ready. Fuel prices were at their highest level and LPS could help optimize the load and save fuel. He said that there were technical issues and change management errors with the user group, i.e., the Ramp Agents, who have not had input before the system was launched and were not happy with the execution. The LPS was discontinued and ██████████ established a project team and sought employee input into the design of T-point and RSS. (CX 4 and 6)

As described in Article Five, Section One of the CBA, employees in the classification of Ramp Agent/Provisioning Agent (Ramp Agent) are responsible for loading, unloading, servicing, guiding, and directing Company aircraft. More specifically and pertinent here paragraphs C and F provide:

C. Loads and unloads the cargo compartment of the aircraft with cargo (such as Customers' baggage, air freight, air mail, ballast, and Company materials) according to a pre-determined plan *received either electronically or manually from an Operations Agent. Submits, either electronically or manually, a Cargo Bin Loading Slip (CBLS) to an Operations Agent.*

F. Receives and records Customer baggage, air freight, air mail, and comat as required. *Scans Customer baggage and baggage carts at T-point for airside delivery. Re-stickers misconnect bags.* [Emphasis supplied.]

The language “*received either electronically or manually from an Operations Agent. Submits, either electronically or manually, a Cargo Bin Loading Slip (CBLS) to an Operations Agent*” and “*Scans Customer baggage and baggage carts at T-point for airside delivery. Re-stickers misconnect bags*” did not appear in the prior CBA. The prior CBA was originally effective June 14, 2001 through June 20, 2006, but was extended by the parties through June 30, 2008, when the current CBA became effective.

Through three members of the Union’s 2008 bargaining team, Patti Adams, an Operations Agent for 15 years, Charles Cerf, President of Local 555 and a Ramp Agent, and Garry Drummond, TWU International Vice President, the Union introduced the bargaining history from the negotiations leading to that change in language. Drummond and Cerf were co-chairs of the Union’s bargaining committee and Adams was the member of the committee responsible for taking and keeping the Union notes, compiled from her own notes and those of other bargaining team members, of the bargaining sessions. (UX 1) The Company offered

testimony about those negotiations from [REDACTED], who attended one bargaining session, [REDACTED], Vice President-Labor Relations and chief negotiator for the Company and [REDACTED], currently Director of Employee Resources but then the Manager of Employee Resources.

Plane-side scanning was discussed at several bargaining sessions. On April 22, 2008, [REDACTED] presented an overview of “Ramp Suite” and the Company’s associated bargaining proposal containing changes in Article Five. In addition to LPS and T-point, other items were listed in the overview as “Future Considerations” including driver support tools, additional tracking points outside of T-point, scanning of bags at transfer points and extending the scanning processes to the loading and unloading of aircraft, i.e., plane-side scanning. (UX 2A) Adams testified that [REDACTED] said Ramp Suite was important because the Company needed to be able to track customers’ bags all the way through and, hopefully, lower costs through improved baggage handling. She did not recall safety being mentioned, but the Company did want to include plane-side scanning in the CBA.

At the April 30, 2008-bargaining session the Union expressed concerns about the changes in Article Five going from specific to vague language, so that changes in Ramp Agent job duties were unclear, and raised a number of other questions. Regarding the Article Five, Section One Ramp Agent/Provisioning Agent proposals, the Union provided the Company with the following written questions:

D. Warehouses, weighs, stacks, picks up, and delivers air cargo; checks air cargo handled against its accompanying forms to identify any mishandling or discrepancies; and corrects routine errors. *Also performs Cargo security screening functions.*

1. Would this only apply to Ramp Agents assigned as warehousemen?
2. In those cities where Ramp Agents are assigned as drivers/warehousemen, would they perform screening functions?
3. Would Ramp Agents assigned as solely as drivers be assigned to perform screening functions?
4. What type of training would there be?
5. Who would be trained?
6. How often would recurrent training be necessary?
7. Is Cargo security screening function considered safety sensitive for the purposes of random drug & alcohol testing?
8. Will this displace Ops Agents?

K. Perform security screening on products delivered by vendors as directed, by Federal security mandates.

1. Would this only apply to Provisioning Agents?
2. Would this screening function be considered safety sensitive for the purposes of random drug & alcohol testing?

S. *Complete work duties and responsibilities according to Company established procedures and receives/delivers information into the Company's system as required.*

1. This language is too vague. If this represents Ramp Suite, specifically what duties, responsibilities does this cover? [UX 4. Emphasis original.]

During that session the parties discussed the language of the Company's proposal and the above questions. Adams testified that, because the Company had said paragraph S of their proposal was intended to cover Ramp Suite, the Union felt the language was too vague. █████ said he would double check on whether the cargo security functions would lead to the positions being categorized as "safe sensitive" and whether the new language would change the arbitrator's decision on ramp router. After the Union offered to provide a counter proposal with minor changes to the current language, █████ said he would rather the Company go back and fine tune the proposal.

At the May 1, 2008-bargaining session █████ presented the Company's revision of its Article Five proposal. (UX 5) The cargo and vendor security screening functions were eliminated. Paragraph S from the April 30 proposal now appeared as paragraph R and stated:

R. Completes forms and paperwork connected with work assignments according to established procedures and enters such information into the Company's information system as required. The work of a ramp agent remains intact; however, technology may present new methods by which to accomplish their work. Ramp agents will perform their duties according to Company established methods and procedures and will receive/deliver information into the Company's system as required. [UX5. Emphasis original.]

Drummond expressed concerns that having a Ramp Agent input information affecting weight and balance would put them in a "safety sensitive position" thus placing them in the random drug and alcohol test pool for the first time. █████ responded that he would have to do some checking. Neither party wanted to expand the categories of employees subject to random drug and alcohol testing for a variety of reasons, including the cost of such testing. The Union was also concerned about displacing Operations Agents.

█████ testified that drug testing was discussed at length and he thought that the Company got back to the Union, at the time, to say it was not a problem. He could not say that

the CFRs about safety-sensitive positions would never be reinterpreted because that is outside the Company's control. He said that there also was a lot of distrust that the Company was going use general, vague language to put operations people in a centralized location and have 10 or 20 Operations Agents dispatch 3000 flights rather than the current 8 to 9000 people. He said that was not the Company's intent but they were sensitive to the Union's concerns.

At the May 7, 2008-bargaining session the Union presented a counter proposal that made changes in Article Five, Section Two, but went back to the original language in Article Five, Section One. (UX 6)

On May 8, 2008, the Company presented a proposal adding the language "and scans" to Section One, paragraph F to encompass the Ramp Suite program. (UX7) ██████████ attended the May 8 session to discuss how the Ramp Suite system would work and to answer questions. Wahlenmaier testified that he did not say the Company would never use plane-side scanning.

Adams testified that the Union had listened to what the Company was trying to accomplish with Ramp Suite. At the May 14, 2008-bargaining session the Union presented a counter proposal that includes the new language in paragraphs C and F of Article Five, Section One. (UX 8) Adams noted that the agreed-to language makes no reference to plane-side scanning. Her notes include the following:

██████████: "Let us go back and study on F. under ramp-future scanning at gate."

Garry Drummond: "—explained as pie in the sky—could discuss later if it comes up."

██████████: "They mentioned pie in the sky." [UX 1 at U.]

May 15, 2008, the parties tentatively agreed to the Union's May 14-counterproposal. (UX 8) According to Adams, the Company had achieved scanning at T-point and could have agents resticker at T-point, but still did not have plane-side scanning. Her understanding was that plane-slide scanning was "pie in the sky," would be negotiated later, and when the Company wanted broad language to encompass it the Union had said no. She noted that T-point scanning has still not been implemented and, as an Operations Agent, she has never received a CBLS electronically.

Cerf testified that the Company was not really prepared to discuss plane-side scanning. They did not know the details of how it would work or what equipment would be used, and they committed to negotiate later when they were more prepared.

Drummond testified that the Company understood that plane-side scanning would be a

██████████ was the Director of Employee Resources at the time of the negotiations.

change in working conditions and brought the topic up, among other issues. The Union's adopted proposal did not mention plane-side scanning and it was clear that plane-side scanning was not included. On cross examination he said that manually completing the CBLS is not a safety-sensitive function "because they are not populating the weights and balance information as it would have been done if they had plane-side scanning. They give that information to the Operations Agent, and the Operations Agent then populates it and creates the weight and balance." (Tr. At 97) He also said that plane-side scanning is used at American Eagle and the parties negotiated for it.

██████████ testified that a scanner is a device to take information and turn it into an electronic file. Ramp Suite initially was a T-point driven thing, however, it has always been a requirement for Ramp Agents to count whatever comes to their gate as they are loading it onto the aircraft. There are also many opportunities throughout the course of the day to resticker misconnect items. ██████████ said it was his opinion that "we had achieved pretty much what we wanted, if not everything, with the electronic capabilities of just scanning in – with that [Article Five, Section One paragraph F] language." (Tr. 242.) He said that the Company sought to negotiate Ramp Suite during the 2008 negotiations to instill some electronic technology where the Company thought they could best utilize it at the time. He said the Company enhanced the ability to use electronic technology and did not limit it. With respect to the T-point reference he said "I'm sure people are going to have difference of opinion on that. What I walked away with was that that was the inception of the electronic technology as further – furthered by the electronic CBLS." (Tr. 244.) If a CBLS is to be electronically submitted it would have to be done plane side, at the gate, although the Company had not "locked in" what the device would be to do that. On cross examination ██████████ said that he did not view this as a significant change in working conditions because the Ramp Agents count the bags and now they are to use a device to count the bags.

The negotiations for the current collective bargaining agreement were ultimately concluded in the spring of 2009. At that point, the new provisions of Article Five discussed above became part of the CBA.

██████████ testified that, in addition to working with the project team to develop plane-side scanning, they worked with front-line employees through focus groups. They talked to more than 1000 people and worked with TWU through testing in Arlington, San Antonio and Providence. He viewed it as a collaborative effort and, at some point, it came to his attention that they needed a Letter of Agreement (LOA). From his perspective, if that was something needed to continue the efforts he would do it, "in the spirit of cooperation to keep this thing running." He later learned that the LOA would not be done, but the Company was already at an exposed stage in terms of project design, project investment, and FAA involvement. ██████████ and Harris testified that FAA approval was needed to change from the manual system to an electronic one. ██████████ said that he did not feel that, without a LOA, he would be breaching the CBA because the provision in the contract allows for the CBLS to be sent electronically. Plane side is the only location to capture all the needed information.

On cross examination ██████████ agreed that Ramp Agents have been completing

manual CBLS for 30+ years but reiterated that the CBA says electronic CBLS can be submitted. He acknowledged that there are no Halo scanners at T-point and no kiosks at gates to submit the eCBLS.

Local President Cerf testified that the Company had a long way to go, were trying multiple scanners, and it was an unorthodox way to load: requiring the agent to grab the bag with one hand and scan with the other. He was concerned that Ramp Agents could be injured by lifting 70-pound bags with one hand, although on cross examination he said he did not know of any injuries during tests in several cities. He was unable to draw any conclusions because the testing was done with multiple scanners and the Ramp Agents did not know which would ultimately be used. Sometimes the bag would not scan and had to be moved around, requiring extra time and possibly more Ramp Agents to work the flight. He agreed that Ramp Agents were not subject to random drug testing during the tests, but added that they were not doing full scanning.

After Cerf observed a test, on August 24, 2010, Vice President-Labor Relations [REDACTED] sent the following memorandum to Cerf:

Thanks for the opportunity to meet and discuss the bargaining concept of scanning bags gate side. As I shared with you, ground operations will be conducting a test in the near future in HRL to access the benefits of scanning gate side to meet our weight and balance obligations. Once the exact date is set for this test, you will be notified and we welcome the TWU 555 participation.

At the conclusion of this test, if successful, the Company will meet and agree with TWU 555 on a side letter of agreement that will capture this change as work belonging to the Southwest Airlines Ramp personnel in accordance to the current agreement. [UX 11.]

The Company-proposed side letter, received by the Union on June 29, 2011, reads above the signature lines for [REDACTED] and Chuck Cerf as follows:

SIDE LETTER OF AGREEMENT

NUMBER FOURTEEN

RAMP SCANNING

This will confirm the agreement between the Company and the Union reached during discussion regarding ramp scanning:

F. Received and scans/records Customer baggage, airfreight, air mail, and comat as required. Scans Customer baggage and if

necessary baggage carts as uploaded and/or downloaded as required. Re-stickers/tags this connect bags if necessary. [UX 12.]

Local 555 President Cerf testified that the Company was aware that the 12-member Union Board would have to approve such a side letter. The Board met two times regarding this proposed agreement on plane-side scanning, the first by conference call. Board members who had been on the previous bargaining team recognized this issue as one the Company had tried to bargain for and had committed to bargaining later. Subsequently, the Board voted not to approve the side letter and said the issue should be part of the Section Six bargaining. On cross examination Cerf said that the original time line for testing plane-side scanning was not accurate and, although he initially thought this issue did not need to wait for Section Six negotiations, the window to negotiate it outside the contract had passed.

The parties commenced Section Six negotiations for further amendments to the CBA in July 2011. As of the January 25, 2012-arbitration hearing the Company had not yet submitted a proposal regarding Article Five or plane-side scanning. Drummond testified that [REDACTED] said the Company would present such a proposal, in case the Company lost at arbitration.

RELEVANT PROVISIONS OF THE COLLECTIVE BARGAINING AGREEMENT

PREAMBLE

This Agreement is made and entered into in accordance with the provisions of the Railway Labor Act, as amended, by and between Southwest Airlines Co. (hereinafter referred to as the "Company" and/or "Southwest") and the Transport Workers Union of America, AFL-CIO Local 555 (hereinafter referred to as the "Union"), representing the class and craft of Employees recognized by the Company as Ramp, Operations, Provisioning, and Freight Agents.

ARTICLE ONE PURPOSE OF AGREEMENT

A. The purpose of this Agreement is, in the mutual interest of the Company, the Union, and the Employees, to provide for the operation of the Company under methods which shall further, to the fullest extent possible, the well-being of Southwest's Customers, the efficiency of operations, and the continuation of employment under reasonable working conditions. It is recognized to be the duty of the Company, the Union, and the Employees to cooperate fully to attain these purposes.

* * *

ARTICLE TWO SCOPE OF AGREEMENT

A. **Recognition.** The Union is recognized by the Company as the sole and exclusive bargaining agent for the Employees of the Company based in the United States, its territories and possessions, who comprise the class and craft of Ramp, Operations, Provisioning, and Freight Agents. The Union reserves the right to defend and protect any covered Employee.

* * *

C. **Reasonable Work Rules.** Employees covered by this Agreement shall be governed by all reasonable Company rules and regulations previously or hereafter issued by proper authority of the Company which are not in conflict with the terms and conditions of this Agreement and which have been made available to covered Employees and the Union Office prior to becoming effective.

D. **Management Rights.** The right to manage and direct the work force, subject to the provisions of this Agreement, is vested in and retained by the Company.

ARTICLE THREE STATUS OF AGREEMENT

* * *

E. **Amendments.** Either party may propose in writing to the other party any amendment which it may desire to make to this Agreement. No amendment hereto shall be valid unless in writing and duly and properly executed by the Vice Presidents of Ground Operations and Provisioning and the President of the Union.

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 covered under this specific labor contract. Agents required to perform such duties must be current and qualified within that classification.

A. Loads, unloads, services, guides, and directs Company aircraft.

B. Transports cargo to and from aircraft, including from the Company to other carriers

C. Loads and unloads the cargo compartment of the aircraft with cargo (such as Customers' baggage, air freight, air mail, ballast, and Company materials) according to a pre-determined plan received either electronically or manually from an Operations Agent. Submits, either electronically or manually, a Cargo Bin Loading Slip (CBLIS) to an Operations Agent.

D. Warehouses, weighs, stacks, picks up, and delivers air cargo; checks air cargo handled against its accompanying forms to identify any mishandling or discrepancies; and corrects routine errors.

E. Safeguards Customers' baggage, air cargo, air mail, and comat from the weather, loss, theft, damage, and/or destruction.

F. Receives and records Customer baggage, air freight, air mail, and comat as required. Scans Customer baggage and baggage carts at T-point for airside delivery. Re-stickers misconnect bags.

G. Checks cargo forms for accuracy and corrects forms as necessary.

H. Equips aircraft cabin interiors for flights with equipment and supplies such as blankets, literature, disposal and refuse containers, and commissary items (including ice), in accordance with applicable paperwork.

I. Hand cleans interior of aircraft by such operations as hand sweeping and dusting, empties ash trays, and uses specialized cleaning fluids and materials, using mechanized cleaning aids as required, in accordance with applicable paperwork.

J. Removes stains from upholstery; cleans windows; and cleans and services laboratories and galleys and disposal containers, in accordance with applicable paperwork.

K. Transports cabin, commissary, and cleaning equipment between aircraft and storage areas.

L. Wears visual identification required by the Company, prominently displayed for ready recognition.

M. Maintains an inventory of cabin equipment items, commissary items, and cleaning equipment and supplies, including the storage areas for such supplies and notifies local management of possible materials needed.

N. Checks delivery of supplies for shortages and brings discrepancies to the attention of local management.

O. Works according to Company regulations and procedures and instructions from supervisors issued in accordance with this Agreement.

P. As qualified, operates all power and other ground equipment (including push back tugs) assigned by the Company to complete its airline operations.

Q. Has routine contacts with people outside the Company such as delivery agents, shippers, etc.

R. Completes forms and paperwork connected with work assignments according to established procedures and enters such information into the Company's information system as required.

S. Keeps work area in a clean and orderly manner, including storage areas for Company supplies and commissary items and Employees' break room.

T. Provides friendly service to all co-workers and Customers.

ARTICLE NINE TRAINING

* * *

D. **New Equipment.** When any new type of equipment is put into service by the Company, and an Employee is required to operate such equipment as a part of such Employee's duties, the Employee shall be given an opportunity to become familiar with

such new equipment. The Company shall insure that Employees are adequately trained before being required to operate such equipment.

CONTENTIONS OF THE PARTIES

The Union's Contentions

The Union contends that the Company improperly is attempting to change the clear and unambiguous language of the Collective Bargaining Agreement in regard to the work duties of Ramp Agents without bargaining with the Union. The evidence and testimony shows that plane-side scanning was discussed during multiple sessions and negotiated for by the Company in 2008. The Company then adopted the language that the Union offered in their counter proposal. The Company offered no direct testimony, written evidence, or negotiation notes as proof or rebuttal to the Union witnesses' more credible testimony and exhibits about those negotiations.

The Union contends that the Company violated the Railway Labor Act when Vice President [REDACTED] sent notice of the "system wide" rollout of plane side scanning, after the Union had initiated Section Six bargaining. The Company was trying to change a work rule that had been in place for more than 30 years, the manual documentation of commodities on the CBLS. The Company could not and did not address the concerns verbalized by the Union about the ergonomic issues, possible safety-sensitive inclusion by the FAA or DOL, and the greater possibility of injuries to the membership during the 2008 negotiations or since. The Union wants and is entitled to answers to these questions. The Company must negotiate and bargain for those changes, not attempt to bargain for them and fail; then turn around and unilaterally implement.

This change is being driven by the Company, and there is no directive from the FAA on plane-side scanning. The FAA was satisfied with the three-phase response to the EPI and that did not include plane-side scanning.

This issue initially was presented as a Customer Service issue in the 2008 negotiations, in that scanning bags at T-point would help stop the bags from being lost. The safety of passengers is of the utmost concern and paramount to TWU and its members. Safety, however, should not be used to manufacture a reason to implement a program that clearly qualifies as a change in work rules, required under the Railway Labor Act to be bargained for between the parties.

The Union expressed concerns about the Company's "blank check" proposal and, after the Union's counter proposal reverting back to the current language, the Company offered another proposal:

The work of a Ramp Agent remains intact; however, technology may present new methods by which to accomplish their work (e.g. scanning bags and carts for airside delivery, re-sticker misconnect bags, and **electronic delivery** of the Cargo Bin Loading Schedule to the Ops Agent). Ramp Agents will perform their duties

according to Company established methods and procedures and will receive/deliver information into the Company's system as required. [Emphasis added.]

The Union contends that this language dealt with the Ramp Agent functions at T-Point and did not encompass plane-side scanning. The discussions reflected in the notes show that the Union was very clear in their objections and problems with the "pie in the sky" proposals regarding plane-side scanning. The Company accepted the Union's proposal to change the language in Article 5, Paragraph C, allowing the electronic or manual submission of the CBLS. That language did not include plane-side scanning. The Company's proposed changes in Article 5, Paragraph S were rejected and the parties reverted back to the existing language in Article 5, Paragraph R of the CBA. The Company now characterizes this exchange as in the spirit of cooperation. The Union asserts that when proposals and counter proposals go across the table over three weeks, that is called negotiations.

In 2010 the Company made a commitment to negotiate a side letter on this issue because they understood that they needed the Union's agreement. In 2011 the Company proposed a side letter but the Union rejected it because the parties were now, again, in Section Six negotiations and the issue should be resolved through bargaining. The Company can have plane-side scanning when they bargain for it.

The Union is not seeking monetary award. The Union respectfully requests that the grievance be awarded and the Company be directed to cease and desist the planned implementation of plane-side scanning and return to the bargaining table, currently in process, and negotiate any changes to Article 5.

The Employer's Contentions

This grievance alleges a violation of the CBA and, therefore, the Union bears the burden of proving both the existence of a contractual right and a breach of this alleged right. The Union never obtained the right to dictate the Company's implementation of plane-side scanning technology. And, given that there was no contractual right to limit the Company's choice of the tool used for electronic submission of the CBLS, the Union similarly fails to demonstrate that any breach could have occurred when the Company announced its intention to implement plane-side scanning.

The Company contends that the plain language of the CBA does not support the Union's requested remedy. Assuming that this Arbitrator finds the language to be ambiguous, the Union must demonstrate through a preponderance of the evidence that the parties mutually intended that the CBLS electronic submission is permissible but technology required to accomplish the submission is not. Not only is the Union's proffered interpretation illogical, it is wholly unsupported.

The Company did not bargain away its right to determine the appropriate technology to accomplish the electronic submission of the CBLS. To rule in favor of the Union, would not

only undermine the Company's rights to manage its operations, but would essentially create language in the CBA which does not currently exist, both of which are beyond the authority of this Arbitrator.

If an ambiguity in the language exists, it must be construed against the party that proposed a language, i.e., the Union. It was incumbent upon the Union to clarify any confusion as to the meaning of the provision.

The Company contends that management has the prerogative and responsibility to control operational methods. The implementation of plane-side scanning is based upon a sound reasonable business decision to create a technological barrier to human error in the content and method of submission of the CBLS report. In the end, Management is charged with a duty to see that the business is run efficiently and the employees owe a duty to cooperate in every way to see that such efficiency is carried out.

The Company contends that it has the right to issue reasonable work rules provided they are not otherwise in violation of the CBA. To date, no one has argued that plane-side scanning is unreasonable and, as set forth above, the implementation does not run afoul of any contractual provision. Nevertheless, the implementation of plane-side scanning does not even rise to the level of a work rule change. Rather, it is an operational change which at all times remains within the Company's sole discretion.

The Company contends that a properly notified to the Union of this reasonable operational change. The Union was not only advised throughout its development, but the Ramp Agents themselves had the opportunity to weigh in the need for it, the design of it, and the use of it. [Tr. at 302, 311; Co. Exs. 4, 6]. The Company met with the Union and individual members about this throughout 2010 and 2011. Ultimately, when it was clear the Union was not willing to support the Company's implementation, the Company was constrained to notify the Union of its intent to proceed with the rollout without its support.

The Company has a long-standing past practice of implementing new technology without the Union's acquiescence. Under well-established arbitral authority, where the CBA is conspicuously silent on a term, as is the case here with respect to the type of technology the Company is permitted to use to accomplish electronic CBLS submission, past practice may be considered to determine the parties' intent. The Company has introduced very similar scanning technology to replace this Union's members' manual counting on numerous occasions. Mail scanners, liquor kit scanners and other tracking devices have been introduced over the years without Union consultation or agreement.

The Company has acted responsibly to comply with its statutory obligation to perform its operations with the highest possible degree of safety. In furtherance of this goal, the Company must always search for procedures and tools that limit or eliminate the opportunity for human error. Plane-side scanning is just that tool. The Parties' collective bargaining agreement also recognizes that "[t]he right to manage and direct the work force, subject to the provisions of this Agreement, is vested in and retained by the Company." To that end, the Company uses its best

judgment to manage safety risks. In matters of assessing an employer's right to introduce technology that provides barriers to human error relating to weights and balance of the aircraft, deference to the air carrier's and the FAA's judgment is warranted.

As stated above, the Union has a large burden to carry in this case and it has failed to do so. The Union proposed and agreed to the contract language providing for the electronic submission of CBLs. The CBA also clearly provides that Ramp Agents are to receive and record cargo but does not specify how they are to do this or the tools that they are to use. The CBA requires the parties to seek efficiencies, for management to create reasonable work rules and to train on new technologies. The Law requires the Company, as an air carrier, to operate at the highest level of safety and plane-side scanning is indisputably safer than any other known technology. The FAA has required the Company to correct its weight and balance procedures, and is expecting the Company to comply with its commitment to implement plane-side scanning. The Company has a long-standing past practice of implementing new technology in its sole discretion. In light of these factors, the Union fails in its argument that the Company's mere request for an agreement relating to plane-side scanning somehow conferred upon the Union a contractual right to prevent its implementation. As such, the Company requests that this grievance be denied in its entirety.

ISSUE

The parties stipulated that the issue in this matter is to be framed by the Arbitrator.

The Company's Proposed Issue is:

Did the Company breach the collective bargaining agreement ("Agreement") by notifying the Union on October 5, 2011 that it intended to roll out plane-side scanning technology to its ramp agents. If so, what is the appropriate remedy?

The Union's Proposed Issue is:

Did the Company violate the contract when it failed to successfully negotiate plane side scanning and notified the Union of their intention to unilaterally implement plane side scanning? If so, what is the proper remedy?

The undersigned Arbitrator finds the issue to be:

Did the Company violate the CBA when it announced the unilateral implementation of plane-side scanning? If so, what is the appropriate remedy?

FINDINGS

In this case, involving a contract-language dispute, the Union bears, and willingly accepted, the burden of proof.

At the heart of this case is whether implementation of plane-side scanning is a change in working conditions governed by the CBA that requires negotiation with the Union or whether it is an operational change the Company can unilaterally implement. There is not always a bright line between these two concepts. Where a particular action falls can only be determined by examining the nature of the change, the impacts the change has on the bargaining unit employees, the language of the CBA, and how the parties themselves have treated such actions.

Clearly, not every technological change amounts to a change in working conditions. The Company points to other types of scanners, e.g., mail and liquor kit scanners, and other tracking devices that have been introduced over the years without negotiation or Union agreement. Indeed, Article Five, Section One specifies that Ramp and Provisioning Agents use equipment for various jobs without specifying precisely what type of equipment that is. They use “mechanized cleaning aids” (paragraph I) and operate “all power and other ground equipment (including push back tows)” (paragraph P). The evidence shows that, not surprisingly, technological changes have been made over the years in many areas in this industry.

The Ramp Agents, however, have manually recorded the commodities they load onto planes for more than 30 years. The format of the document has changed, without negotiation, but the essence of the Ramp Agent’s responsibility has remained the same: they load cargo in the bins and record that information on a document that is then sent to the Operations Agent.

At first blush, the use of a tool such as a handheld scanner to count and record bags and other commodities appears to be simply a change in the method of performing the same work. When presented with the Company’s Ramp Suite plans at the May 8, 2008 bargaining session, however, the Union raised particular concerns about the plane-side scanning. These concerns included the possibility of Ramp Agents being subjected to random drug and alcohol tests and the possible impact on job security for Operations Agents.

Other concerns the Union expressed about the Company’s proposal for Ramp Agents to be responsible for cargo and vendor security screening proved valid and the Company quickly backed off those aspects of its Article Five proposal. Union witnesses maintained that the Company never provided a definite answer as to whether, by being responsible for electronically populating the eCBLs with information ultimately used for weight and balance, the Ramp Agents would become subject to random drug testing. The Company’s only witness on this point, [REDACTED], testified that he “thought” that the Company had gotten back to the Union to say it was not a problem. Therefore, the weight of the evidence establishes that the possibility of random drug testing remained an open issue of concern to the Union.

It was apparent that in May 2008 the Company was in the early stages of researching what scanning technology might be used. The Company thus was unable to answer the Union’s

questions about how the Agents would be impacted. In fact, in the Company's presentation of the overview of Ramp Suite plane-side scanning was identified as a *future consideration* and was described as "pie in the sky."

The Company now takes the position that the language in Article Five, Section One, paragraph C, providing for the electronic submission of the CBLS to the Operations Agent, provides contractual authority for plane-side scanning. When the Company agreed to the Union's counterproposal on Article Five, ██████████ agreed to go back and study plane-side scanning and to discuss it later. Given that the Company was unable to answer questions and agreed to go back and study the plane-side scanning issues raised by the Union, it simply is not possible to conclude that the parties had a meeting of the minds that such new plane-side scanning technology would be encompassed within the amendments to Article Five tentatively agreed to on May 15, 2008.

Further, ██████████ testified that people would have a difference of opinion on the T-point reference in Article Five, Section One, paragraph F. Although he testified as to his understanding that the inception of electronic technology was furthered by the electronic CBLS, to include plane-side scanning, he did not say that he had shared that understanding with the Union negotiators across the table. On the other hand, it is clear that the Union negotiators had told the Company of their concerns with plane-side scanning. Thus, the Union did make the meaning of its accepted counter proposal clear. That language was not to include plane-side scanning, as the parties had agreed there were too many open questions and it would need to be discussed later, when the Company had answers.

The evidence establishes that in 2008 the parties agreed to electronic submission of the CBLS and to continue discussions about plane-side scanning when more information was available. Contrary to the Company's contentions, those two things are not inconsistent or illogical. Rather, that agreement reflected the Union's acceptance of electronic submission of the CBLS, scanning at T-point and the need for additional information before negotiations could be concluded regarding the *future* portions of Ramp Suite, i.e., plane-side scanning.

As the Union learned more about how various types of scanning equipment would actually be used, they raised concerns about ergonomic injuries resulting from use of a scanner while lifting 70-pound bags, discipline for inaccuracies, additional time required to scan or re-scan, and the possible need for additional Ramp Agents, in addition to the still open questions about random drug testing. These impacts on the working conditions of Ramp Agents could be significant and represent a much larger change than, for example, a revision to the format of a CBLS form.

The Company here contends that its willingness to discuss plane-side scanning with the Union did not create an obligation to refrain from unilaterally implementing that technology. The Company did engage both the Union and bargaining unit employees in discussing and in testing different approaches to plane-side scanning.

The Company's actions, however, went beyond mere discussions. Following on the

commitments made during the 2008 negotiations, the language used in the August 24, 2010-memorandum from Vice President-Labor Relations ██████ to Local 555 President Cerf, after Cerf had observed a test, is significant. ██████ starts by saying “Thanks for the opportunity to meet and discuss the *bargaining concept* of scanning bags gate side.” (Emphasis supplied.) After describing an upcoming test ██████ states “At the conclusion of this test, if successful, the Company *will meet and agree* with TWU 555 on a side letter of agreement that will capture this work as work belonging to the Southwest Airlines Ramp personnel in accordance to the current agreement.” (Emphasis supplied.)

The testing continued and the Company shared its plane-side scanning plans with the FAA to begin enlisting their assistance in the required approval process. Finally, on June 29, 2011, the Company sent the Union a proposed side letter of agreement changing the Article Five, Section One, paragraph F phrase “at T-point for air side delivery” to “as uploaded and/or downloaded as required.” It appears that the Company was surprised that the Local 555 Board rejected this LOA and insisted, instead, upon discussing the issue in the then ongoing Section Six negotiations for amendments to the CBA.

The impetus for the Ramp Suite program was multifaceted. It is designed to improve customer satisfaction by speeding the unloading of bags and reducing the incidence of bags being lost or mishandled. Ramp Suite would also lower the Company’s costs by reducing turn times and the costs associated with lost bags, and by improving fuel economy through better trim. Finally, full implementation of Ramp Suite would improve safety by increasing the accuracy of the CBLIS itself and the transmission of that information to the Operations Agent for use in the weight and balance calculations. Full implementation of Ramp Suite also has significant impacts on the working conditions of the Ramp and Provisioning Agents and the Operations and Freight Agents. A comparison of the operational changes required by Ramp Suite with the current language in Article Five describing the work of those employees makes it clear that their working conditions will be changed when Ramp Suite is implemented.

The record of this case establishes that during the 2008 negotiations the Company sought broad changes in Article Five of the CBA that were rejected by the Union. The changes ultimately agreed to did not encompass the Company’s use of plane-side scanning because there were too many unanswered questions and the parties agreed to continue negotiations on that aspect of the Ramp Suite. Implementation of plane-side scanning would alter the working conditions of Ramp Agents as set forth in Article Five, Section One of the CBA. Therefore, unilateral implementation of plane-side scanning is a violation of the CBA. The grievance will be sustained.

The Union has not sought a monetary award. The request for a cease and desist order is appropriate.

AWARD

The grievance is sustained. The Company is directed to cease and desist from unilaterally implementing plane-side scanning until the completion of Section Six negotiations pursuant to the provisions of the Railway Labor Act.

A handwritten signature in cursive script, reading "Elizabeth Neumeier", is written over a horizontal line.

Elizabeth Neumeier, Arbitrator

April 9, 2012