ARBITRATOR'S OPINION AND AWARD

In the Matter of Arbitration Between:

June 30, 2015

SOUTHWEST AIRLINES COMPANY

and

TRANSPORT WORKERS UNION OF AMERICA, AFL-CIO
Local 555

Grievance: AUS-O-2274/14 [redacted]

Before

Elizabeth Neumeier, Arbitrator

Representing:

The Company:	Kevin Minchey, Senior Attorney General Counsel Department, Southwest Airlines, Co.
The Union:	Jerry McCrummen, Vice President, TWU, Local 555 Ryan Wittmuss, Arbitration Consultant

Statement of the Award: The Company did not violate the CBA. In accordance with Article Twenty, Section One, Paragraph C, the costs of the arbitration shall be borne by the Union.

BACKGROUND

Southwest Airlines Company (Company or Southwest) and the Transport Workers Union Local 555 (Union) are parties to a collective bargaining agreement (CBA) effective July 1, 2008 through June 30, 2011, and continuing. In this case the Union protests that Grievant was denied training to work as an Operations Agent. The remedy requests: "Train agent for operations and pay any OT assignments that the agent would have been awarded and any shift trades that the agent would qualify for."

Within the bargaining unit are two classifications, each with two job titles, set forth in Article 8-Seniority. The Ramp/Provisioning Agents classification contains the job titles of Ramp Agent and Provisioning Agent. The Operations/Freight Agent classification contains the job titles of Operations Agent and Freight Agent. The term "Cargo" is often used for "Freight" by the parties and will be interchangeably here. To take a job in a different classification an employee must complete an internal placement application (IPA), be interviewed and, if successful, be awarded the bid. To change job titles within a classification the employee need only complete an internal bid form and, unless barred by the six-month clause, the employee with the most seniority will obtain the lateral transfer.

An employee obtaining a job in a new classification must complete initial and recurrent training. Recurrent training for Operations and Cargo occurs in the first quarter of each year. All employees must complete annual recurrent training in order to remain current and qualified, and any additional training required as a result of new or changed Company, FAA or TSA rules or regulations. Employees who transfer via an IPA from one classification to the other, or who transfer via an internal bid from one job title to another, remain current and qualified in their former position until the next recurrent training is required or until a new training requirement is imposed that they do not complete.

The Grievant was first hired as a Ramp Agent in Austin in 2002. In 2007 he applied and was selected to be a Freight Agent, took the initial training, and has taken annual recurrent training since that time. He is also the Union Representative for Austin Operations and Cargo.

In September 2014 the Grievant requested to receive initial Operations Agent training so that he could work voluntary overtime, then being offered in Operations. At that time Operations was shorthanded and they were "mandatorying" people to work at the double time rate of pay. The Grievant normally picks up extra hours in Cargo but the schedules were changed so his did not match up to pick up extra hours. By getting trained he could pick up extra hours at time and one half, and relieve the mandatory overtime situation in Operations. (UX 1.) He would also learn the whole operation for purposes of represention. MRO Nastasi Hancock told him the training would not be available, but offered him "a day in the field" for training on his own time. The Grievant also signed the call book for Operations overtime but management market "I.E." for illegal entry. (UX 2.) During that timeframe some Operations Agents traded shifts and partial shifts with certain Freight Agents. (UX 3.)

The instant grievance, filed on October 20, 2014, was denied by the Company on the

following basis:

> As you know, AUS maintains a separate freight bid. As such, after reviewing this grievance and researching the CBA, I have been unable to find the article which gives Freight Agents at this location a contractual right to be trained in Operations, which is what your assessment claims. There is no violation and this grievance must be respectfully denied. [JX 2, pg.3]

The Union appealed to arbitration. The parties stipulated that the case is properly before the undersigned arbitrator for final and binding decision.

The Union offered testimony from the Grievant, Local Union President Chuck Cerf; bargaining unit members [redacted] Union Representative [redacted].

The Company offered testimony from Director of Labor Relations Bill Venckus, Senior Manager for Southwest Airlines University James Lee, Consultant Ruth Ann Chancellor, and Station Manager Tom McGee.

The Grievant testified that, in 2007, when he accepted the Freight Agent position the Company asked if he wanted to be trained "strictly Cargo or Cargo and Ops." Some of the training overlaps. He said he would do Cargo first, and asked if he could be trained later in Ops. They said "yes, all you've got to do is request it."

On cross examination, the Grievant agreed that certain provisions of the 2007 CBA have been changed. Specifically, in the prior CBA, commonly referred to as the Orange book, Article 6, Section 2, Paragraph E provided:

> **E.** **Relief Shifts.** Relief shifts shall be bid separately in 1) Ramp; 2) Provisioning; and 3) Operations (including Air Freight). Schedules for Relief Agents in the Operations classification may include assignments in Operations and/or Air Freight, and Operations Relief Agents may be used in Air Freight. For bidding purposes only, Relief Agents bids shall be designated as A.M. or P.M. preference. To the extent such assignments are available, the Company shall recognize such preference.

The Grievant acknowledged that, if he had bid to be a Relief Agent, he could have worked in both the Operations and Freight classifications and the Company would have been in violation of the CBA if they then had not trained him in both. However, in 2014, the language relating to Relief Agents working in both classifications no longer exists, and the Relief Agents no longer have to be current and qualified to fill both the Operations and Freight Agent positions. He agreed that initial training takes more time now than it did in 2007. The Grievant reiterated, however, that the Company changed the policy of allowing Agents to train and work in the other

classification that was offered to him when he became a Freight Agent.

Union President Cerf participated in negotiating four CBAs and is currently in Section 6 negotiations. He testified that the Company did not bring up in negotiations any proposal to not cross train agents and a tentative agreement on that section has been reached. The 1990-1994 CBA, commonly called the Beige book, contained new language in Article 7 reading as follows:

> J. Where separate freight bid locations are maintained, an overtime call book will be maintained in each bid location within the Operations/Freight location. The call book will reflect a separate column in the Operations call book for Freight overtime and a separate column in the Freight call book for Operations over time. Overtime within a bid location will be filled first from within the bid location if employees within that bid location have signed the call book. If no one within the bid location has signed the call book, the overtime will be awarded from the call book at the other bid location to employees who are qualified and current for the position for which overtime is required. The determination of qualification and currency necessary to be eligible for overtime in a bid location shall be at the sole discretion of the Company. If no one signs the call book at either bid location, the overtime will be assigned to the junior available employee within the bid location, as outlined in Paragraph I. Sub- Paragraphs 1., a., b., and c., of this Article. [UX 4, pg. 2]

The 1995-1999 CBA, commonly referred to as the Blue book, contains this same language, as does the 2001-2006 CBA, i.e., the Orange book, and the current CBA, commonly referred to as the Red book. Cerf agreed that the language pertaining to Relief Agents has changed. However, the Company's decision to not allow employees to train and utilize the language quoted above would be a violation of the status quo and, under the Railway Labor Act, something the Company should negotiate about if they wanted to change it.

On cross examination, Union President Cerf agreed that Paragraph J contains language leaving the determination of qualification and currency necessary to be eligible for overtime in a bid location to the sole discretion of the Company. Further, when the Relief Agent language changed, the change meant that a Relief Agent in Operations would just work in Operations and a Relief Agent in Freight would just work in Freight. He reiterated, however, that the determination of qualifications language means that the Company has the right to determine whether the employee is qualified and the currency language means that it is up to the Company to determine how often they want to train them to keep them current and qualified.

Union witness [redacted] has worked for Southwest since 1993 in a variety of positions including reservations and maintenance. She moved to Cargo in August 2010 and initially was unable to be cross trained. After her Union representative got involved and seven months of asking, she was cross trained for Operations the summer of 2011. In April 2013 she transferred

to Operations and then moved back to Cargo in October 2014. Since she was qualified for both, she signed the call book for both and received shifts in Operations prior to someone in that classification being mandatoried. Since October she has worked approximately 250 overtime hours in Operations and 15 to 20 shift trades. She also works overtime and shift trades in Cargo, but most of the hours are available in Operations. In January 2015 her Cargo Manager said that, as of the end of March, she would not be able to work in both places. The financial impact of not being allowed to work in both departments is enormous. In 2014 she made $115,000 and the average "topped out" Operations or Cargo Agent working 40 hours per week makes $55,000. She enjoys working in Cargo, but would not have left Operations if she had known of this restriction. Further, there are no temp positions in Cargo although she could be on the Disaster Relief Temporary Team (DRTT). To return to Operations she has to wait for an opening and use her seniority to bid. However, she gave up a lot of seniority when she transferred.

On cross examination Agent Y said that when, in October 2014, she transferred from Operations to Cargo she was still current and qualified in Operations until the end of the first quarter of 2015. She then was not allowed to take Operations recurrent training.

Union witness [redacted], with Southwest since 1993, is a Dallas Cargo Agent and Union Representative. She has worked Ramp, Operations, Freight, and Provisioning, and had transferred to central bags, thus causing her to lose all her seniority when she returned to Cargo. She remains in Cargo because she is in the middle of the seniority list there, is able to hold AMs and has better options for vacation. She signs up for overtime in Operations where the majority of hours are, and for shift trades because those are guaranteed. She has been working in both departments for three years. As the Union representative she has had to file grievances over people not being allowed to train for the other department. In 2009 she filed two grievances protesting "overtime bypass" due to the Company not allowing the grievants to become current and qualified in Operations. (UX 6.) Both of those grievances were resolved on the basis that the Company allowed the grievants to be trained and she was not aware of any grievances with a different result. In 2014 [redacted] earned $70-71,000 which was a little less than in the prior year. Without being allowed to work in Operations, she would not be able to apply for a temp position in another station or to work charters, which are lucrative. In mid-January 2015 her Manager told her that as of March 31 she would no longer be current and qualified and allowed to work in Operations as a result of a headquarters decision. She asked four times for this policy in writing and he would not even provide the name of the person announcing policy.

Union witness [redacted] has worked for Southwest since 2000 and moved back and forth between Freight and Cargo in three different cities. Since July 2013 he has worked in Dallas Cargo, but he also worked in Dallas Operations. He signs the overtime book in both places and needs the overtime. Since October he has worked 192 overtime hours in Operations and 80 shift trade hours. He also works overtime and shift trades in Cargo. He learned in mid-January that he would no longer be able to go to Operations after March 31 and that if he wanted to work overtime there were positions open in Operations and he should transfer. He was not given a reason or a copy of the memo. He had picked up some shift trades that were canceled when he was told he would be non-Operations qualified as of February 28. He did not file a grievance over the trades being canceled. In 2014 he made $81,000 and this change impacts his

earnings. [redacted] has been working in both departments for approximately nine years and there are no contract changes for them to stop it. He would not have returned to Cargo in July 2013 had he known this would happen because there is very little overtime there. In operations there is overtime, they work charters, and they do temporary assignments.

Union witness [redacted] once served as a Union Representative in San Diego. She started with the Company in customer service in 2001, transferred to Operations in Burbank in 2008, to San Diego in 2010, and to Las Vegas in 2013. While in Burbank she was Cargo certified and she kept that certification throughout her transfers. She worked in both Operations and Cargo in all three stations. Since October 2014 she has worked 30 overtime hours and 500 shift trade hours in Operations. When Las Vegas Manager of Cargo Joe Bonsu said she would no longer be allowed to pick up overtime or shift trades he did not say who made that decision or provide the policy in writing.

On January 19, 2015, Manager Bonsu forwarded to [redacted] an email message from James Lee, Senior Manager Southwest Airlines University, that he had sent to SWA University Field Training-DG; Ground Ops Station Training Supervisors-DG; and Ground Ops Station Manager ONLY-DG, with copies to a number of people none of whom are Union officials. The subject of the email is "Cross trained Ops/Cargo." The text reads as follows:

> You all will remember that in the previous contract that the Operations/Freight Classification could rely on one Relief Agent. This meant that the Relief Agent could work in either department. As such we used to cross train some Operations and Freight Agents. Recently there have been requests to continue cross training Operations and Freight Agents. Since the Relief Agent is no longer allowed to be cross utilized we no longer have a need to cross train Agents in this classification and have discontinued this practice for some time.
>
> In 2015 we are only providing recurrent training for the role the Employee currently occupies. Cargo Agents will [receive] Cargo Recurrent and Ops Agents will receive Ops Recurrent. Therefore at the end of the training cycle (1st Quarter 2015) Cargo Agents will not be qualified to work in Ops and Ops Agents will not be qualified to work in Cargo.
>
> Keep in mind that this doesn't change the fact that those who are still qualified due to a transfer from one department to the other can still sign up and work in either department. Of course they will follow the contractual rules associated with signing up for overtime and shift trades. Please feel free to contact me if you have any further questions or concerns. [UX 13.]

In 2015, while working in Cargo and picking up time in Operations, [redacted] made

$115,000. (UX 11.) She said that this change impacts her financial obligations and the flexibility of giving other people time off. Although she enjoys Cargo more, she felt forced to move back to Operations. When she was a Union representative she filed a grievance in 2012 regarding the Company not training her to perform Cargo duties. (UX 10.) Ultimately the Company provided her with the training and the grievance was not pursued.

A posting for a regular, full-time Operations Agent in Dulles station dated March 10, 2015 states "may perform the duties of a Freight Agent," as does a March 7, 2015 posting for Nashville station. A March 11, 2015 posting for a Freight Agent in Chicago states "may perform the duties of an Operations Agent" and references the Operations Agent position and analysis qualifications. (PAQ) (UX 12.) Agent Z testified that the only PAQ she could find on SWAlife is from 2002 for the Operations Agent/Freight Agent and it states "may perform the duties of Freight Agent, Ramp Agent or Provisioning Agent or other duties depending on size and organization of the station." (UX 12.) She said that nothing regarding this issue has changed in the CBA since 2002. On cross examination, she acknowledged that she did not know if there now is a separate PAQ for Operations and Freight Agents.

Company witness Bill Venckus is currently Director of Labor Relations for Ground Operations and has worked for the Company for 33 years, starting out as a part-time Ramp Agent. Venckus testified that Article 5-Classifications; Article 6, Section One, Paragraph J-Shift-trades; and Article 7-Overtime all referred to agents being current and qualified to perform job duties. A Freight Agent who laterally transfers to become an Operations Agent can still work in Freight as long as they remain current and qualified, and vice versa. The 2010 Work Rules Interpretations for Article 6 make this clear as follows:

> **7. If qualified, can an Operations Agent and a Freight Agent shift trade? (Section One, par. J)**
>
> Yes. [JX 3, pg. 7. Bold original.]

Venckus testified that the "if qualified" language is significant because there are two separate job titles and very few people were qualified or are qualified to go back and forth. For example, a Cargo Agent who transferred to Operations and went through initial training would still be current and qualified in Cargo, and thus able to shift trade and pick up overtime in Cargo. However, depending upon federal rules, federal training requirements, or things that may have happened, that person might be precluded from going back and forth. He said that nothing in the CBA requires the Company to grant a request from a Freight Agent to be trained as an Operations Agent, or the reverse. As provided in Article 7, the Company determines qualifications and currency. Further, Article 2-D, Management Rights, vests the right to manage and direct the workforce in the Company and nothing in the CBA contradicts the approach being taken here.

Venckus further testified that if the Company had to train agents upon request, the cost of training would increase and it would be laborious for either department. Staffing would have to be increased because people would be at training. Federally mandated record-keeping would be

more difficult. Staffing would be inflated because every employee would be able to pick up a shift trade and thus would not be eligible to cover potential overtime in their own job title. This would cause other people to be mandatoried. Safety could be compromised because employees doing a job regularly are more proficient.

Venckus testified that the Relief Agent language in the previous CBA spoke of being able to use a Relief Agent in both departments in limited circumstances. That language no longer exists in the current CBA. He recalled discussions with the Union regarding other employees who, because of the Relief Agent language, felt it was their prerogative to be trained whenever they wanted. The Company steadfastly disagreed with that, although there is a certain amount of logic that if the Company is going to use somebody they have to be trained. At the time the Red book was being negotiated flight activity and staffing numbers were far bigger than they used to be. When he started in Las Vegas there were 20 to 30 employees and when he left there were close to 400 Ramp Agents. The Company wanted more Relief Agents and the Union wanted fewer but with the ability for them to move back and forth between departments. Ultimately the parties agreed to some additional Relief Agents and to remove the ability to go back and forth between departments. The Work Rules Interpretations reflect this change. Interpretation #35 from 2008 stated:

> **35. Can the same Relief Agent be utilized in Operations and Air Freight?**
> **(Section Two, par. E)**
>
> Yes. As long as the Relief Agent is qualified in both, an Operations Relief Agent can be used to cover assignments in Air Freight. [CX 2, pg. 3. Bold original.]

Interpretation #35 from 2010 for Article 6 states:

> **35. Can the same Relief Agent be utilized in Operations and Air Freight?**
> **(Section Two, par. E)**
>
> No. Relief shifts shall be bid separately in both Air Freight and Operations. [JX 3, pg. 12. Bold original.]

Venckus said that once the ability to go back and forth went away there was less of a need, if any, to train someone to go back and forth and virtually no benefit to the Company to do that training. He said that people had been trained, including 40 hours in Dallas, and then on many occasions they did not use it. The perception became that people were training just to get out of their job title for the training period. The Company cannot assign mandatory overtime even if the Agent is cross trained. The Union is seeking that the Company train people so that they can pick up voluntary overtime when they want, but they cannot be mandated when they are really needed.

On cross examination, in response to questions about the grievances the Union had introduced, Venckus reiterated that the Company did not have to train anybody. He did not know if there was a demonstrable need in a particular case, or if the station pushed and got a grievant trained without the headquarters' knowledge. The stations sometimes do things that are improper and unknown to headquarters. This is the first grievance on this topic that has been brought forward. Venckus reiterated that the change in the Relief Agent language was a demarcation line about not using people in both departments, but, given the roughly 10,000 employees, he did not think it surprising that some slipped through.

Company witness James Lee, who has worked for the Company for 19 years and has held his current position since 2011, described some of the differences in training for Operations and Cargo Agents. Initial training classes for both are held monthly, but recurrent training takes place in the first quarter of each year unless there is an emergency directive. Then there are "drop-in" topics that employees must complete within a certain amount of time. He calculated the number of hours required for the different types of training: pre-classroom on the job training, classroom training, and post classroom on the job training for Operations and Cargo. Using information provided by ground operations he calculated the cost to provide that training, plus hotel costs and per diem for time spent in Dallas. (CX 3.)

Company witness Lee testified as to the problems involved in cross training employees. Currently the Company uses a computerized learning management system (LMS) to track training. That software is set up by job title. To determine if an agent is current and qualified the LMS will show what training has been completed in the agent's job title. However, to see if that agent is current and qualified in a different job title would require going through the employee's individual transcript, line by line, to validate that there are no gaps in training. From a compliance standpoint there are too many risks associated with that manual approach. From a safety standpoint, the risks include making sure the agents meet all the requirements and are doing the job on a regular enough basis to do it correctly, all of the time. When there is an incident, the first thing the FAA or TSA wants to see is the training transcript of employees involved. Further, employees in the stations do not have access to the LMS system to verify compliance so someone from Southwest University would have to go through and validate every time that happens.

Company witness Lee was given a list of seven employees who were doing both jobs and found that, actually, only two of the employees were current and qualified to work in both directions. Two of those who were not were Union witnesses [redacted] who had several gaps in their training. (CX 5 and 6.) He said that it is not surprising that, after the change regarding Relief Agents became effective in 2009, some agents were still moving back and forth, despite efforts to eliminate it. Prior to 2009 in some stations there was a need for cross training, based on the Relief Agent working both Freight and Operations. In some cases stations had needs, based on staffing deficiencies, to have people trained in both directions. Since then, from a compliance standpoint, they emphasized the need to keep it the correct way so that training can be tracked electronically, as he stated in his January 15, 2015 email. (UX 13.) That was not a new policy. Also, staffing levels in the stations on both sides have been increased, to decrease the need for cross training, and with the change in the CBA language it is simply not necessary.

In addition, Cargo initial training was started in 2013 and the amount of time to train Cargo Agents has increased. The costs associated with the new class are significant and there is no justification for providing cross training.

Company witness Chancellor started working for the Company in 1978 and held a number of positions including Senior Director of Employee Resources. She participated in negotiations with both the IAM and TWU dating back to 1979. With respect to the above-quoted language of Article 7 Paragraph J, she testified that the Company decides whether or not an employee is able to work overtime in any bid location. Further, if an Operations Agent asked to be trained to be a Freight Agent, or the reverse, the request would have been denied unless they had received a lateral transfer. There are different job titles, different job functions, and employees are trained in their specific area. It was the Company's discretion not to train them in other areas, based upon the language of Paragraph J.

Company witness McGee testified that in October 2014 the Austin station was holding off on hiring through the bid process due to an employee displacement situation in a nearby city. There were also two medical leaves of absence at the time. Overtime was needed in Operations for a month or a month and a half, but has dropped precipitously since then.

RELEVANT PROVISIONS OF THE COLLECTIVE BARGAINING AGREEMENT

ARTICLE TWO
SCOPE OF AGREEMENT

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 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.

* * *

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

* * *

SECTION THREE
CROSS-UTILIZATION

It is mutually understood and agreed that under normal working conditions, Ramp Agents shall perform Ramp Agent duties; Provisioning Agents shall perform Provisioning Agent duties; and Operations Agents shall perform Operations Agent duties; however, cross utilization shall be allowed when sufficient personnel of a specific job classifications are not available. No Employee shall be required to perform duties in another job classification unless that Employee has been adequately trained to perform the required duties and is current and qualified.

ARTICLE SIX

SECTION ONE
HOURS OF SERVICE

* * *

J. **Shift-trades.** The trading of a work shift or day off between Employees within the same classification shall be permitted if a request in writing signed by all of the trading Employees is submitted to the appropriate station management at least twelve (12) hours in advance of the starting time of the first intended trade, provided the Employees involved are capable, current and qualified for performing the job functions traded.…

* * *

SECTION TWO
Relief Agents

* * *

E. **Relief Shifts.** Relief shifts shall be bid separately in 1) Ramp; 2) Provisioning; 3) Operations; and 4) Air Freight. Relief Agents bids shall be designated as A.M. or P.M. shifts. A.M. Relief Agents will be used only to cover A.M. shifts. P.M. Relief Agents will be used only to cover P.M. shifts.

* * *

H. **Allowable Amounts.** The number of Relief Agents per station shall be determined by the Company; however, the maximum number allowed shall be calculated separately based on the number of Employees on the current shift bid in each location for 1) Ramp; 2) Provisioning; 3) Operations; and 4) Air Freight, as follows:

* * *

ARTICLE SEVEN
OVERTIME

* * *

J. **Freight.** Where separate freight bid locations are maintained, an overtime call book shall be maintained in each bid location within the Operations/Freight location. Overtime within a bid location shall be filled first from within the bid location if Employees within that bid location have signed the call book. If no one within the bid location has signed the call book, overtime shall be awarded from the call book at the other bid location to Employees who are qualified and current for the position for which overtime is required. The determination of qualification and the currency necessary to be eligible for overtime in a bid location shall be at the sole discretion of the Company. If no one signs the call book at either bid location, the overtime shall be assigned to the junior available Employee within the bid location, as outlined in Article7.I.2. a., b., and c.

ARTICLE EIGHT
SENIORITY

* * *

B. **Classification Seniority.** For any other purposes,

classification seniority shall govern and shall be defined as the length of service for which an Employee receives credit in any of the classifications listed below, accruing from the date of entering such classification. The classifications to be recognized for seniority purposes are:

1. Ramp/Provisioning Agents; and
2. Operations/Freight Agents.

Each classification shall be divided into two (2) job titles. The Ramp/Provisioning Agent Classification shall contain the following job titles:

1. Ramp Agent; and
2. Provisioning Agent.

The Operations/Freight Agent Classification shall contain the following job titles:

1. Operations Agent; and
2. Freight Agent.

Furthermore, effective June 14, 2001, Employees under the scope of this Agreement will begin to accrue seniority within both classifications ("R/O Seniority").

Classification seniority shall determine:

1. Choice of vacation (within a job title);
2. Shift assignments including days off (within a job title);
3. Reduction in force; and
4. Filling vacancies within a classification.

ARTICLE ELEVEN
FILLING OF VACANCIES

A. **Permanent Bid File.** Vacancies in all Ramp, Provisioning, Operations and Operations (Air Freight) positions shall be filled from the permanent bid file in the office of the appropriate department head. When a vacancy occurs, the senior Employee in that classification who has a bid on file shall be offered the opportunity to transfer. All permanent bids shall be in writing. An Employee who accepts a lateral transfer as the result of his bid or who, more than 24 hours after being notified of an award, refuses to accept a transfer for which he bid, shall not be eligible for a

vacancy, other than a new station vacancy, for a period of six (6) months from the time of his assignment or refusal and shall have all other bids on file at the time voided. If any Employee elects to have their bid removed they must submit their request.

* * *

F. Lateral Transfers. Vacancies within a classification shall be filled by the senior bidder, according to classification seniority.

ARTICLE TWENTY
GRIEVANCE/SYSTEM BOARD/ARBITRATION
DISCHARGE and DISCIPLINE

SECTION ONE
PROCEDURES

* * *

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

CONTENTIONS OF THE PARTIES

The Union's Contentions

The Union contends that the Company changed, without notice or warning, their policy with regard to the allowance of training being sought out by Operations and Freight employees who wish to receive such training. This policy change has a severe negative impact on these employees. Under the Railway Labor Act the Company must maintain the status quo under the working rules and conditions of the current CBA unless they negotiate changes.

The Union contends that the testimony of four agents showed that the overtime and shift trades, over a period of years and in multiple cities, is not a "flash in the pan occurrence." The Company clearly has a need that these agents are fulfilling year after year. The mutually-generated benefits of cross training include a reduction in mandatory overtime, in accordance with the parties' agreement contained in Article 7, Paragraph I, that "mandatory overtime assignments are not in the best interests of either party."

The Union contends that the Company did not substantiate its claims with respect to safety. Company witness Lee did not bring his research to substantiate his statements. Nor was his cost analysis persuasive. The hourly costs he used are nearly 3 times the starting wage in the Operations and Cargo job titles. Further, Company witness Venckus testified that "very few" agents were actually cross trained. This small number would nullify the contention that the cost of cross training would be an unbearable burden. Nevertheless, the financial impact to the front-line employees doing the work would be enormously detrimental.

The Union contends that the Company's reliance upon the Article 2 management rights clause is misplaced. The true intent speaks to how leaders command the workforce for daily flight activity and work duties. With respect to Article 7, Paragraph J, the intent of that clause was simply stated by Union witness Cerf as follows:

> The determination of qualification, the Company has the right to determine whether the employee is qualified or not. That's simple. The currency necessary is the frequency of the training, and it's up to the Company to determine how often they want to train them and keep them current and qualified. That's the simple straightforward summary of the language, and that's what it means." [Tr. 71, lines 9-16.]

This language does not say that the Company has the right to decide who gets the training. The Company wants to take Paragraph J one sentence too far.

The Union contends that the Company is improperly relying upon the change that allowed Operations and Cargo both to have the option of having their own Relief Agent to change how overtime is awarded in these two job titles. Neither the CBA nor the Work Rules Interpretations ever mention changes in how overtime is awarded. Question #37, addressing Article 7-Overtime, clearly points out the ability for Operations Agents to sign up for overtime in Cargo as follows:

> **37. If more than one overtime assignments are available, does the senior Employee have first choice? (Par. I and Appendix A)**
>
> Yes. The book allows agents to elect a preference by indicating one (1) for first choice, two (2) for second choice and so forth. Example) Agent A (senior) (Ops) has chosen 1-AM, 2-Frt.-PM, and 3-PM. Agent B (Ops) chose 1-AM and 2-PM. The available

> shifts are AM-Ops, PM-Frt. Agent A will be awarded the AM-Ops shift and Agent A will be awarded the PM-Frt shift. *See Appendix A. [JX 3, pg. 20. Bold original.]

In the Union's view this work rule interpretation clearly points out that Operations and Cargo Agents in fact do have the right to pick up overtime and shift trades, and that the Company knew of and agreed to this as an established way to operate. This view is reinforced by question #46 in the same section, as follows:

> **46. Since Operations and Air Freight are now separate bid locations, how does the overtime work? (Par. J)**
>
> There is no change from the previous contract. [JX 3, pg. 22. Bold original.]

As to the Work Rule Interpretation introduced by the Company, Paragraph J outlines the procedure for overtime between Operations and Cargo. Work rule question #8 only reaffirms that Operations and Freight Agents have historically been linked with the ability to cross train, thus establishing a status quo. The Union introduced grievances as far back as May 2009 and as recent as April 2012 that were settled in the grievants 'favor. The Grievant here is seeking the same award: the option to be trained in Operations.

For the foregoing reasons the Union requests that the grievance be awarded and the Company bear the cost of the arbitration as required by Article 20, Paragraph C of the CBA.

The Company's Contentions

The Company contends that the Union has failed to meet its burden of proof that the Company violated the CBA and abused its discretion when it denied the Grievant's request to be trained as an Operations Agent. Nothing in the CBA requires the Company to train any employee to perform a different job, nor does any past practice.

The Company contends that under the plain language of the CBA the Company has the exclusive right to manage and direct the workforce, which clearly includes the right to decide whether to train an employee. The Union relies upon a roundabout argument to conclude that because the Company must award overtime if the employee is current and qualified, then the Company must provide training. This argument ignores the fact that the Company has the "sole discretion" to determine the qualifications or training necessary to be eligible to work in a bid location. The Company, not the individual employee, decides who, when, where, what, and how to train employees.

The Company contends that the language of Article 7 makes clear that determination of qualifications and currency for overtime is at the "sole discretion of the Company." If, as President Cerf testified, the Company has the right to determine whether an employee is qualified or not, the Company obviously has the right to decide whether to qualify or train that

employee. Company witnesses Venckus and Chancellor testified that the Company has always determined who should be trained to perform a particular job function.

Further, the evidence does not support the Union's argument about past practice. Each of the four agents called to testify were initially trained when the CBA allowed for Relief Agents to perform both jobs so that, at that time, there was a justification to provide the employees with the training. The Union was only able to show a few sporadic incidents where a handful of employees received training outside their job titles. These isolated incidents do not establish a past practice and there is no evidence that any such practice was established and accepted by both parties.

The Company contends that the Union's position would lead to absurd results. The Company likely would not reap benefits because most employees do not end up utilizing their training and some request training solely to be off work or to artificially inflate the amount of overtime at the stations. It also would significantly increase costs of training and to the station to cover shifts in training. The Union wants employees to be able to request training so they can pick up voluntary overtime, but also want to prevent the Company from requiring the same employees to work mandatory overtime. The solution already provided in the CBA is for an employee to transfer to Operations to take advantage of an increase in overtime.

Finally, the Company contends that it acted reasonably and in good faith in denying the Grievant's request. There was no need for the Grievant to be trained to work as an Operations Agent in Austin because management knew that the increase in overtime was temporary. Given the significant compliance and safety issues associated with training an employee to perform a different job, the Company properly decided not to provide this training to the Grievant.

For the above reasons, the Company requests that the arbitrator find no violation of the CBA and deny the grievance in its entirety.

ISSUE

As framed by the Union: Was the contract violated, and if so what is the appropriate remedy?

As framed by the Company: Did the Company violate the collective bargaining agreement when it exercised its discretion, when it denied the Grievant's request as a freight agent to receive initial training to be an ops agent, and, if so, what is the remedy?

FINDINGS

The evidence presented in this case illustrates the complexities the parties must deal with in reaching the detailed agreements needed to carry out the CBA's stated purpose, i.e., "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." (Article 1.) This case involves the interplay of employees' use of their seniority to increase earnings, agreed-upon classifications and job titles, and the requirement that each employee be current and qualified to perform job functions.

The Union alleges that the Company, without notice or negotiation, changed its policy of allowing cross training of Operations and Freight Agents. No written statement of such a policy was introduced, but the evidence shows that under the Orange book Relief Agents bid for a combined Operations/Air Freight shift. That was unlike the two job titles in the Ramp/Provisioning classification, bid separately by Relief Agents. Article 6, Section 2, Paragraph E specifically stated that schedules "for Relief Agents in the Operations classification may include assignments in Operations and/or Air Freight, and Operations Relief Agents may be used in Air Freight." Necessarily, therefore, the Operations/Freight Relief Agents had to be cross trained in both Operations and Cargo. This approach is recognized in the 2008 Work Rules Interpretations, quoted on page 9 of the Background, above.

This changed with the current CBA. Pursuant to the current language of Paragraph E, relief shifts are now bid separately for the two job titles within the Operations/Freight Agent classification, as has always been the case in the Ramp/Provisioning classification. The assurance given to the Grievant when he became a Freight Agent in 2007, that he would be able to be trained later in Operations, preceded the change in the CBA eliminating cross utilization of Relief Agents. This change is clearly reflected in the 2010 Work Rules Interpretations, quoted above on page 9.

The change in Relief Agent language, however, does not resolve the instant case. The Grievant had not bid for a relief shift. Rather, he held a bid as a Freight Agent as a result of his successful IPA. It is from his Freight Agent position that he now seeks to use his seniority to obtain overtime hours in Operations by signing the call book.

The Union has pointed to no specific language in the CBA, currently or previously, that expressly permits such use of seniority to work in a different job title. The Union does rely upon language in Article 5, Section 3, stating that "cross utilization shall be allowed when sufficient personnel of a specific job classifications are not available" and Article 7, Paragraph J, stating that if "no one within the bid location has signed the call book, overtime shall be awarded from the call book at the other bid location." Both of those provisions also require that the employee be qualified and current for the position. From these provisions the Union argues that the Company has an obligation to cross train employees within the Operations/Freight classification, upon request, so that they are able to work in this manner.

The Company presented strong evidence with respect to both the negotiating history and the past application of the cross training provision. The specific language of Article 7, Paragraph J supports the Company's reading when it states that the "determination of qualification and currency necessary to be eligible for overtime in a bid location shall be at the sole discretion of the Company." The interpretation offered by Union President Cerf, by limiting the application of that language to only permit the Company to establish the content and frequency of training,

would not permit the Company to determine eligibility for overtime. Thus, the Union would not give full effect to the agreed-upon language.

The Union is correct that once an employee is successful in moving to a new job title, whether by IPA or lateral transfer, the Company is obligated to provide training for that employee to become current and qualified to work in that job title. However, the parties' agreement in Article 5, Section 3, that, under certain circumstances, employees may be cross utilized, does not mean that the Company is required to cross train any employee, upon that employee's request, in case those circumstances arise. Such an interpretation would place the cart before the horse, by requiring training before the Company determines that there is a need for additional staffing.

The facts of this case illustrate the essential problem with the Union's approach. In the fall of 2014 a lot of overtime was being worked in Austin Operations. There was so much overtime that employees were being mandatoried to work, something both parties recognize as "not in the best interests of either party." As explained by Station Manager McGee, this was due to the fact that the station had vacancies that were being held open temporarily pending resolution of employee displacements in another station and the fact that two employees were on medical leaves of absence. They knew that the medical leaves would soon end and that the bid process would be completed to fill the vacancies. In fact, both occurred and the amount of overtime available declined precipitously. By exercising its discretion, the Company avoided the expense of training the Grievant to perform overtime that would not have been available at the point when his training was complete.

The Union also argues that the Company has changed a past practice of permitting cross utilization. However, the evidence presented is insufficient to establish such a practice, one that would have the effect of amending provisions of the CBA as discussed above. Clearly, some Cargo Agents who had previously been Operations Agents were able to pick up overtime and trade shifts in Operations before their currency lapsed. That will continue to be the case, and the same will occur for Operations Agents who moved to Cargo. The 2010 Work Rules Interpretations specify that Operations and Freight Agents can shift trade, if qualified.

The Union here seeks to go further, however, and require the Company to, upon the employee's request, permit an employee to attend all training necessary to remain current or, in the Grievant's case, become qualified and then remain current. The evidence in this record establishes that that was the practice under the prior CBA for Relief Agents in the Operations/Freight Agent classification *only*. As discussed above, that Relief Agent contract language was eliminated and, therefore, that limited practice was eliminated as well.

As to the Union's contention that this alleged practice was mutually beneficial because cross-trained agents were filling a need, year after year, the CBA already provides for cross utilization, in Article 5, Section 3. If that provision is used, in accordance with its terms, the employee must be adequately trained, current and qualified.

For the above reasons, the Union has not established that the Company violated the CBA.

In accordance with Article Twenty, Section One, Paragraph C, the costs of the arbitration shall be borne by the Union.

AWARD

The Company did not violate the CBA. In accordance with Article Twenty, Section One, Paragraph C, the costs of the arbitration shall be borne by the Union.

Elizabeth Neumeier, Arbitrator

June 30, 2015