

ARBITRATOR'S OPINION AND AWARD

In the Matter of Arbitration Between:

February 22, 2016

SOUTHWEST AIRLINES COMPANY

and

TRANSPORT WORKERS UNION OF AMERICA, AFL-CIO  
Local 555

Grievance: BUR-R-1559/15 (Termination – Agent X)

Before

Elizabeth Neumeier, Arbitrator

Representing:

The Company: Erick C. Burroughs, Attorney, Southwest Airlines Co.

The Union: Brian Smith, Grievance Specialist, TWU, Local 555

Statement of the Award: The grievance is sustained and the Grievant will be reinstated with full seniority but without back pay. The Grievant shall be issued a Letter of Instruction for absencing himself from the work area for nearly two hours, contrary to the limited practice of employees taking an early break when light Sunday schedules permit, and in violation of BPOC #7. In accordance with Article Twenty, Section One, Paragraph C, the costs of the arbitration shall be borne by the Company.

## 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 the termination of the Grievant as being without just cause as is required by Article Twenty, Section One, Paragraph L-14.

At the time of his termination the Grievant was working as a Ramp Agent at the Burbank station (BUR) and had worked for the Company for nearly 21 years. He was notified on June 22, 2015, of a fact-finding meeting scheduled for June 25<sup>1</sup> “to discuss your whereabouts on Sunday, June 14<sup>th</sup>, 2015 between 600AM – 800AM.” At the results of fact-finding held on July 1, the Grievant was notified by BUR MRO Alison Boyle of his termination as follows:

A fact-finding was held on Thursday, June 25<sup>th</sup>, 2015 to discuss your whereabouts on Sunday, June 14<sup>th</sup>, 2015 between the hours of 6:00AM to 8:00AM. Present at this meeting were you, TWU Representative, Ramp Supervisor Leo Yoda and myself.

After a thorough and complete investigation into this matter, and after review of the testimony and documents provided at the fact-finding, we have determined that you left work at the start of your shift on Sunday, June 14<sup>th</sup>, 2015 while on the clock and without permission from a Supervisor. These actions are in violation of the Southwest Airlines Ground Operations Basic Principles of Conduct, including, but not limited to, the following:

- 4. Complete coordination with Coworkers and Supervisors is required to provide harmonious working conditions.
- 7. Dependability and punctuality are necessary. You are expected to be in, or at your position and ready to work when you are scheduled.
- 14. Performing your job in a careless, negligent, or unsatisfactory manner.
- 40. Time theft will result in termination.

Based on the above and as a result of your actions, your

---

<sup>1</sup>All dates are 2015, except as noted.

employment with Southwest Airlines is terminated effective immediately. [JX 2, pg. 9.]

The grievance, filed on July 1, complains of “unjust termination” and requests as a remedy “to be reinstated as an employee of Southwest airlines, be paid lost wages and lost overtime and be made whole in every way.” After the Company denied the grievance, the System Board deadlocked on August 21, 2015. The case was submitted to the undersigned arbitrator for final decision following two days of hearings and the filing of briefs.

The Company offered testimony from Customer Service Agents (CSAs) “B” and “M,” MRO Boyle, Manager of Labor Relations Debbie Griego, BUR Ramp Supervisor Evan Myatt, BUR Ramp Supervisor Yoda and Labor Relations Manager Vance Foster.

The Union offered testimony from the Grievant, BUR Ramp Agents Y, D, Z, A, B and C, and from Elected Union Representative A, District 7 Representative Mike Roach and District 5 Representative Robert Bettinger.

On June 14, the Grievant was scheduled to work 6:00 A.M. to 2:30 P.M. as a Gate Assist at Gate A-4. His first flight was an originator, #4039, scheduled to depart at 8:35 A.M. for Denver. That flight actually departed at 8:26 A.M.. The Grievant’s SIDA badge swipe records show that the Grievant entered the terminal A double doors leading to the ramp area at 5:58 A.M.. The Kronos time clock records show that the Grievant swiped in at 6:02 A.M., on time within the allowed two-minute grace period, using the time clock in the ramp break room. Then, at 6:04 A.M., he used his badge to exit the Gate 1 door to enter the terminal from the ramp area. At 7:49 A.M. the Grievant again used his SIDA badge to reenter the double doors leading to the ramp area. There is no dispute that from the time the Grievant clocked in at 6:02 A.M. until 7:49 A.M. he performed no work and did not report to or speak with a Supervisor.

CSA “B” reported to MRO Boyle that she had observed the Grievant exiting the airport, out of uniform, at approximately 6:00 A.M.. She provided the following statement and testified consistent with her statement at arbitration:

On Sunday June 14<sup>th</sup>, 2015 at 6:00 am I witnessed Agent X in street clothes going into the parking structure.

At 7:52 am I witnessed Agent X walking through the baggage claim area from Hollywood way direction in his work clothes. This is not the first time I have witnesses [sic] this. On this particular day he was being paged on the radio by ramp supervisor around the same time he was returning at 7:52 am and did not respond to radio call. On this day I reported it to MRO Alison. I have concerns about retaliation but felt it should be reported. [CX 2.]

CSA “M” also made a report to management, after hearing a radio call for the Grievant

and observing him walking through the baggage area. She provided the following statement and testified consistent with her statement at arbitration:

On Sunday June 14<sup>th</sup> I was working in the baggage claim office. I heard a radio call for ramp agent Agent X but no response at approximately 7:55. I looked up and noticed him walking through the BSO outside area heading in the doors behind carousel 2 between [sic] 7:55 and 8:00. I said to my Co-Worker [CSA "B"] that there's Agent X (since they were [sic] calling him on the radio) She had made a comment earlier that he came to work earlier (in the 6:00 hour) in his "non-uniform attire" and left after he clocked in. We decided to ask the MRO later in the day if this was allowed. [CX 3.]

MRO Boyle, who has worked for the Company for 17 years and in Burbank for 7 ½ years, first learned of the Grievant's absence from his work site through a text message from CSA "M" asking her to stop by. When she met with CSAs "M" and "B," CSA "B" said she had witnessed the Grievant exiting the airport in street clothes. CSA "M" heard over the radio that the Supervisor was looking for the Grievant and saw him coming through the baggage department. After checking the Grievant's badge swipes and learning the results discussed above, MRO Boyle spoke with the two Ramp Supervisors who were on duty, Hugo Arreola and Chris Loffarelli. Arreola said he had not seen the Grievant but was looking for him before the first originator at Gate 4 because it was a heavy load and they were starting early. Boyle let the Supervisors know, just after 10:00 A.M., that she would follow up with the Grievant.

Supervisor Arreola provided a statement to MRO Boyle, as follows:

On June 14, 2015 Agent X was assigned to gate A4 assist. I, Ramp Sup Hugo was checking the load on the Originator going to Denver on A4. The flight had a total of 134 bags going on. Agent Y was the gate lead for A4 and he went to T-Point to get his bags around 0745 so we can start loading the flight early (the flight is a 0835 dept. time). At that time I went to the ramp breakroom to look for Agent X to give him a heads up about the flight and that we were going to start to load the flight early. But he wasn't in the ramp breakroom. So I left the breakroom and saw the gate lead Agent Y with his bags at A4. On the flight at A4 (DEN) we started loading the rear of the aircraft, which had 60 local bags and 17 Transfer Den bags (total of 77 bags in the rear). I had in the rear to assist with the flight a floater, Lav Tech, and Agent E take over the loading in the rear. So I went back in the ramp breakroom to look for Agent X and made a radio call to see if "anyone is around Agent X or if anyone has seen him to report to gate A4". After I made the call I seen Agent X driving from the looks to be from gate A6

towards A4 to his gate. Not sure where he was coming from? After the rear of the plane was loaded, we still had a cart of about 57 local Denver bags to load in the front of the Aircraft. Once the rear was loaded and I saw Agent X at his gate, I left the flight to go to the Sups office. [CX 8.]

Supervisor Loffarelli provided a statement as follows:

On Sunday 6/14/15 I was scheduled as the T-point sup for a 0530 shift. I clocked in at 530 and then went to the ramp sups office. I met with Ramp sup Hugo to go over the daily call outs and staffing for the day. At about 545 I went down to T-point for the remainder of my shift. At no time this morning did I see or speak to Agent X or give him permission to leave the airport property during his shift. [CX 11.]

MRO Boyle explained that there can be downtime between 6:00 A.M. and the first scheduled flight. Ramp Agents are scheduled at 6:00 A.M. because the operation starts when check-in is opened for customers at 5:30 A.M.. Flights are scheduled earlier than 8:35 A.M., there can be system failures, heavy flights may need assistance, Agents could go home sick or be injured, and mechanicals could require moving people around or getting extra assistance. The expectation is that Ramp Agents are actually there, ready to work, when they are on the clock and being paid.

MRO Boyle testified that she met with the Grievant just after 1:00 P.M. and asked about his whereabouts between 6:00 and 8:00 A.M.. His first response was that he had clocked in and she could check his punches. She told him she knew he had clocked in and asked where he had been. He responded "here" and when she asked if he was "here" the entire time he said yes, but then said he did have to run back to his car. The Grievant further explained that he cuts it close, and once he parks he makes a run, clocks in, then returns to his car to get his backpack. She then asked if he had been present after getting his backpack and he said yes. That response concerned her because it did not make sense that if he was running late he would leave things he needs in his car. Boyle said that as she questioned him he became a little defensive, and she explained that employees had come forward to say he had not been in uniform and had been absent for approximately two hours and that Supervisor Arreola had been looking for him. The Grievant responded that he had been wearing his uniform shorts and sometimes keeps the shirt in his locker or car. He suggested she check the video.

MRO Boyle did look at video, obtained from the Burbank airport and introduced as Company Exhibit 9. The Grievant can be seen entering and wearing his uniform shorts, but not his shirt. The video also shows him walking away from the ramp area, into the baggage area and toward the parking lot, at 6:08 A.M.. He can be seen returning at 7:51 A.M. and swiping to

access the ramp area at 7:52 A.M.<sup>2</sup> MRO Boyle testified that this appeared to be time theft because he was on the clock and had left the property. Employees are not given lunch breaks at the start of a 6:00 A.M. shift, pursuant to the CBA, and there is no such practice at Burbank station.

MRO Boyle testified that, at the fact-finding, the Grievant stated that he did return to his car to have breakfast after clocking in, looking at his assignment, and seeing that his first flight was at 8:35 A.M.. He clarified that he drove to Dad's Donuts, was gone for about 15 minutes, parked on Burton and stayed in his car until it was time to come in for his flight. At her request the Grievant wrote a statement that reads as follows:

Sunday morning June 19<sup>th</sup> I checked into work on time, later returning to my vehicle to get breakfast, not much but some donuts.

I returned starting originate duties and completed a flight that departed nine minutes early from the status of OTIS. [CX 10.]

After speaking to the Grievant and the two Ramp Supervisors, holding the fact-finding, collecting statements, badge swipes and video, MRO Boyle conferred with her Station Manager and Labor Representative. She concluded that this was time theft, a violation of the BPOC that results in termination. She cited BPOC #4 because he did not report to his Supervisor and ask permission to leave; #7 because he was not there between 6:00 and 8:00 while being paid and was late for his first flight; and #40 because this was time theft. She said that the Grievant did have good evaluations, was a good employee and she had no previous issues with him, but the Company does not tolerate stealing and length of employment does not matter when it comes to theft. Further, the Grievant was dishonest with her when she initially asked about his whereabouts and then, at the fact-finding, said he drove to the donut shop. MRO Boyle added that it was not easy for the two CSAs to come forward and they have been subjected to comments being made and other employees not talking to them.

The Grievant's training transcript reflects that he had been trained on the BPOC, most recently on August 12, 2014. In addition, on September 1, 2010, the Grievant had signed to acknowledge receipt of a memorandum to "All Ramp and Operations Agents" from the "Burbank Leadership Team" dated August 30, 2010, on the subject of Meal and Rest Periods. That Meal and Rest Period memo states:

There seems to be some confusion in reference to the duration of meal and rest periods. In order to clarify and give everyone a firm understanding of the subject, this memo is being distributed to all Ramp and Operations Agents, in order to alleviate any confusion and protect Agents against possible future issues. The current

---

<sup>2</sup>The times stamped on the videos do not correlate precisely to the badge swipe times.

contract between the TWU and Company allows for two fifteen minute rest periods and one half hour meal period. This is referenced in the Contract on page eleven, Article six paragraphs B. and H. The contract also gives the Station Management the ability to manage and direct the workforce.

This memo is intended to serve two purposes. First and foremost is to inform all that the contractual meal and rest periods will be enforced. Secondly this is to advise all Employees that meal and rest periods or any period of time that you are away from your area of responsibility will need to be coordinated with your Supervisor. Failure to abide by the contractual guidelines, may lead to discipline up to and including termination. [CX 12.]

MRO Boyle testified that the Meal and Rest Period memo is the current practice at the Burbank station.

On cross examination MRO Boyle agreed that the Grievant's evaluations were good, his attendance was great, as is reflected in his -5 points and accumulation of 1680 hours of sick time, and he has a good stack of letters of commendation. She reiterated, however, that none of those factors mitigate the offense of time theft. She agreed that breaks are not scheduled or posted by Supervisors and employees take them between flight assignments, and added she has not had a single complaint of someone not getting a scheduled contractual meal break. Employees start working originators 45 minutes prior to departure time, but on this occasion the Gate Lead for Gate 4 started early because it was going to be a heavy load. MRO Boyle agreed that, as the assist, the Grievant's first assignment would be to get ice, which would take approximately 10 minutes, and he did perform that assignment. From Supervisor Arreola's statement she concluded that he utilized people to assist and went to search for the Grievant.

Manager of Labor Relations Griego testified that this case is similar to that of Agent F who was terminated after it was determined at a fact finding that he had left work while being paid. Arbitrator Vernon denied his grievance. Here, too, the Grievant was not available and in position for a Supervisor to give him an assignment. The Company has zero tolerance for time theft because it can have no trust in the employee. On cross examination she said that time theft supports just cause, without mitigation. She acknowledged that the Company learned that Agent F had engaged in this behavior on many occasions.

The Grievant testified that on the morning of June 14<sup>th</sup> he misjudged timing to arrive at work. He got up, got some breakfast and parked in the parking structure next to the terminal. He then went inside to the break room, clocked in and reviewed the schedule. After realizing he had ample time, he moved his vehicle to avoid the \$25 fee. He parked on Burton Avenue and finished the hot chocolate, doughnut and muffin he had in the car that he had purchased prior to arriving at work. Knowing he did not have anything to do that first hour he took advantage of the tranquility moment before walking back into the facility to prep the aircraft. His responsibilities included ice for the rear and forward, as well as loading luggage in the forward

bin. From his parking space he could see the entire ramp and if any planes were there.

The Grievant testified that when it is slow, such as on Sunday mornings, Ramp Agents often go to Denny's or other eateries such as Starbucks, Panda Express and McDonald's, that function as a food court for the Burbank airport. These establishments are all off the airport premises and a short walk. He said it has never been the standard practice to notify Supervisors before walking to those places. Supervisors know the Ramp Agents are leaving the airport and eating because they and the Managers do the same thing, and they observe Ramp Agents returning with bags of food from the eateries. He has had breakfast with Supervisors and Managers over the years. In 1994 or 1995, before those eateries were present, two or three carloads of Ramp Agents, Supervisors and Managers would get breakfast much further from this locale.

The Grievant testified that, after parking his car, he saw Gate Lead Y who was heading to T-point, and went to the ice room to scoop and load 7 ½ bags of ice. That took approximately 10 minutes. He could not have iced the plane sooner because the TSA security seals had not been removed. He then parked the tug against the wall of the tarmac and, with Y, loaded the front. The rover loaded the back. Y then filled out the bin slip and he did the walkaround and pulled the rear stairs. They pushed the plane nine minutes early and Y remarked that he had never worked a smoother flight.

The Grievant testified that he was approached by MRO Boyle on the tarmac at around 11:30 A.M. or 12:30 P.M. for a vague and pretty casual conversation. She asked where he had been between 6:00 and 8:00 A.M. and if he had been "here this morning." He remembers that question because he thought "what do you mean have I been here this morning, because I'm looking around and, like, I'm standing right in front of you." When she asked if he had arrived on time, he paused and asked if she knew something different. When she asked if he had been in street clothes, he asked where this was going. He initially said that he was dressed as he was then, but immediately stopped and corrected himself, that he had on uniform shorts and the tank top he was wearing under his uniform shirt. She told him that a couple of people had seen him leaving the premises and he said that was correct. He described parking and moving his car, and getting breakfast and his bag. She thought it unusual and that he would have taken the bag in with him the first time, but he said it would have delayed him. The Grievant testified that MRO Boyle did not seem alarmed that he would have parked, punched in and then moved the car, and that would not have alarmed any Manager or Supervisor because doing that was not rare. Other employees and Supervisors have done the same thing.

The Grievant further testified that the first time he saw Supervisor Arreola was on his way to the break room, after speaking with MRO Boyle. He said that Supervisor Arreola did not work the Denver flight. He thought it was a strange chain of command that the MRO talked to him and not his Supervisor. He asked Arreola if everything was okay and told him he had just gone through a series of questions with MRO Boyle. He responded "really, about what?" After he related the questions, Supervisor Arreola said he was not looking for him over the radio and he did not send a text message, which is the primary communication used. The Agents Supervisors and Managers have worked together for years and have each others' cell phone

One week later the Grievant received the fact-finding notice, from a different Supervisor. He testified that no one had asked about his whereabouts between 6:00 and 8:00 A.M. and this was the first time he heard of anything specific. He immediately took the notice out to Gate 4, where Arreola was helping off-load, thinking he had not been forthcoming. Arreola denied knowing about it and said he did not know that he would be at the fact finding.

The Grievant testified that in the fact-finding meeting he realized that the casual conversation he had had with MRO Boyle was becoming a big deal. When she asked “what exactly did you do between 6:00 and 8:00?” he said he moved his vehicle from the parking structure, crossed the street, had a hot chocolate and doughnut, and returned to work, after being in the vehicle for an hour plus. He testified that he still was not thinking anything strange about it because, other than being in his vehicle, he could very well have been in Denny’s eating breakfast on Sunday morning. When MRO Boyle said he did not mention that originally, he responded that she had not been specific and he was elaborating on the events, not changing his story. No one else testified at the fact finding.

On cross examination, the Grievant acknowledged that after going through the motions of clocking in he left because there was not any work to do. He agreed that he did not check in with a Supervisor or talk with anyone in the break room. He reviewed the schedule and the early show schedule. He agreed that he cannot foresee anything that might change, but was sure he would have received a phone call or text from Supervisor Arreola if he was needed, as has been done a million and one times.

Ramp Agent Y was the Ramp Lead at Gate 4 on June 14. He has worked for the Company for 20 years and at one time was a Supervisor. Y testified that he saw the Grievant at 6:00 A.M. in the break room, clocking in. He immediately went out to do the groundwork of the airplane, which took approximately 15 minutes, and then sat in the break room until 7:45 A.M. because there was literally nothing for him to do on Sunday mornings. He sometimes goes across the street to eat. If he happens to see a Supervisor, he might say he is going to get something to eat and ask if the Supervisor wants anything. Supervisors know that employees leave the premises because when they come back with a bag of French fries or something from Del Taco, they will kid “what, you didn’t get me nothing?” He has never heard of anyone being disciplined for this. Management has never said or posted a notice telling employees this is not allowed. When he was a Supervisor, Agents, including Arreola and BUR Station Manager Niko Dible who were then Agents he supervised, did not come to him for permission to go to lunch. He expected on time performance and that Agents be responsible, but did not schedule breaks. He recognized that is not contractual but it works. Smoking is prohibited at the airport so employees must go outside the airport for a smoke break.

Ramp Agent Y further testified that he has worked with the Grievant for a number of years and they have great rapport. When, at between 7:45 and 7:55 A.M., he went to get the bags he saw the Grievant and knew he was going to get the ice. As the Gate Assist the Grievant was responsible for the ice and loading the front of the aircraft. On originators the back

is loaded by gate floats. The Supervisors put up the “early show” where they have the off-loaders, lav technicians and Provo Agents, who do not have anything to do until planes come in, serve as extra bodies to help assist the originating flights. On June 14 Agent H and Agent G were in the back of the aircraft and Agent E was the off-loader assigned from the early show who worked the bottom of the belt. Supervisor Arreola did not work the flight at all. Agent Y said that he always carries a radio and Arreola did not contact him looking for the Grievant. He said that Denver flights are heavy to work and this one went very smooth. He remarked to Operations Agent A that he was proud and has the “A Team.” He told them “group hug, you guys. I mean, rock on.”

Ramp Agent Y also testified that since the Grievant was terminated morale is extremely low at the Burbank station. The Grievant is one of the nicest, friendliest guys. He gets along with everybody, comes with high spirits every day and is well liked. Agent Y has never seen him get mad or fold under pressure. He irons his work clothes and will take his shirt off for everybody. This has devastated the station and Y, personally, who has worked with the Grievant since he transferred from LAX in 2001. The Grievant is the spirit of Southwest airlines and to have him pulled out from underneath is really embarrassing. He felt like they did a terrific job at Gate 4, getting the flight out nine minutes early. Originators to Denver are lucky to break even.

Union Representative X, who has worked for the Company at the Burbank station for more than 13 years, testified that the Agents take their own breaks when flights allow it. He said that when he is running late, he will park in the parking structure, run in, clock in, check out his flight schedule and, if he has time, go and move his car before coming back. It is also common knowledge and practice that, if an Agent does not have a flight coming in, they may go out and get food and come back. Supervisors know that employees do this and no one has ever been disciplined in the 10 years he has been the Union Representative. On May 22, 2008, one employee, Agent J, was given a Letter of Warning after he left the premises and went home without permission for four hours when he knew he could only leave for two hours. He continued to have problems and his conduct led to the Meal and Rest Period memo issued in 2010.

Union Representative X further testified that morale since the Grievant’s termination has been pretty bad because Agents feel it was unfair and unjust. They cannot understand why he was terminated when everybody else had the same amount of downtime, and he worked his flight, did his ice and did his job, and the flight pushed early. People do not understand the time theft accusation.

On cross examination, Union Representative X said that he does not normally clock in, go to his car, leave the premises and stay gone for one hour and 45 minutes, and he acknowledged that is not a practice everyone follows. He understands time theft to be leaving without clocking out and accepting pay for the full shift. He said that he does not see how it can be time theft when there is no work to do and the Agent is just waiting to work his assigned position.

BUR Ramp Agents D (15 years service, six at LAX and nine at BUR), Z (21 years' service at BUR), A (23 years service, 13 at LAX and 10 at BUR), B (20 years service, six at BUR) and C (19 years' service at BUR) all testified that breaks are never scheduled and Agents take them when the schedule permits. Breaks are not strictly taken between the third and fifth hours of a shift when they are more busy. On Sundays there is usually nothing to do before the first originator and Agents often take breaks then and go off the property to eat without notifying a Supervisor, unless one is around at the time. Supervisors would see them returning from Denny's with bags of food, and knew they had not asked permission to leave. Break time is scheduled for Agents working at T-point. Supervisors contact Agents via text on a regular basis and several examples were introduced as exhibits. Employees and Supervisors who are running late park in the parking structure to clock in. Then, if the duty sheet does not have something for them to do, they go out and move their cars. If they have an assignment, they handle that first.

Ramp Agent D testified that he was working on June 14, 6:00 A.M. - 2:30 P.M., and heard no pages for the Grievant, nor did he see any Supervisor look for the Grievant in the break room. He filed a grievance over not receiving breaks between the third and fifth hours of a shift in LAX, but not in BUR because they schedule themselves. At BUR the Agents were treated as adults and could go "off campus" without notifying a Supervisor if they completed their work.

Ramp Agent Z also worked the 6:00 A.M. - 2:30 P.M. shift on June 14. He was assigned to be the "off loader" or "floater." Z testified that he was in the break room before his first flight and did not see any Supervisor looking for the Grievant. Since he started at BUR in 1994 Agents do not report to Supervisors for assignments. Rather, they look at the assignment schedule on the wall by the time clock. Z said he was shocked when the Grievant was fired, because he is a good worker and did something they all do. On cross examination he said that he has clocked in and gone home once or twice, but not recently, and he has never gone to his car for two hours.

Ramp Agent A was the "off loader" on the 6:00 A.M. - 2:30 P.M. shift on June 14. A testified that he was in the break room before his first flight and did not see any Supervisor looking for the Grievant. The Grievant told him that he drove to the donut shop after checking in, then came back. Since the Grievant was terminated the morale is "everyone watch your back" because it does not make any difference how many years you have got, "they could fire you in a heartbeat." A also testified that the Burbank station is very senior, between 19 and 30 years, and know their duties. If someone were late to a flight, however, they would be written up. No one has ever explained the difference between time theft and leaving without permission.

Ramp Agent B, who usually works at T-point and has scheduled breaks, did not work on June 14, but spoke with Supervisor Arreola and Agent Y during his shift the following day. Arreola said he had not been looking for anyone and Y said he did not hear anything over the radio.

Ramp Agent C had been a Supervisor in 2001 and knew that Agents left to get

something to eat without telling him. They were expected to be back in time to work their flights and, if they were late, he would counsel them about the issue. One employee he supervised who followed that practice, Evan Myatt, is now a Supervisor.

District 7 Representative Roach, who assisted on the investigation of the instant case, described three previous “theft of time” cases.

- In LAS-R-0584/01 Grievant S was terminated for working overtime hours he was not assigned and logging hours he did not work, i.e., falsifying documents. Roach presented this case to the System Board that unanimously reinstated S with “full back pay, no loss of seniority or benefits” but without any overtime pay he would have received. (UX 10.)
- In PDX-R-0467/15, also cited by the Company, Grievant F was terminated for leaving work on many occasions while on the clock and without getting permission from a Supervisor. Arbitrator Vernon noted that time theft “typically involves time card fraud where records are altered or falsified in some way to deliberately claim time not worked.” He still upheld the termination, finding that the Grievant absented himself from the workplace for more than 14 hours over 16 days. (CX 15.)
- In DEN-R-1346/12 Grievant T was terminated for not being in his assigned work area and being paid for time in which he was not available for his work assignment. Roach presented this case to Arbitrator Franckiewicz, who reinstated T, finding that he did not “engage in a scheme to evade work..., disregard the instruction on his schedule to See Coordinator, and he did not make an unwarranted assumption that his ultimate assignment would be to Zone 2.” According to Roach, the only difference between the T case and the Grievant’s is that T, after checking the schedule and seeing that his first flight was not for a couple of hours, went upstairs to a secluded area in the terminal, as many employees did following a practice condoned by management, whereas the Grievant went to his car. (UX 11.)

Roach said that during his investigation the Grievant told him he stopped for donuts on the way to work.

District 5 Representative Robert Bettinger testified about several cases in a series of 27 disciplinary letters, also introduced in the arbitration hearing in the T case, issued by the Company to employees who were not at their positions or were out of their work areas and, in some cases, missed flights or other job duties. Ramp Agent U was given a Final Letter of Warning and two-day suspension for “neglecting the operation for several hours.” Bettinger testified that he was on overtime, sat in the break room the entire day and performed no work. Ramp Agent R, who previously had received two Letters of Instruction and a Letter of Warning, was given a Letter of Warning when he made himself unavailable during an overtime shift and missed a flight. Agent W received a Letter of Warning after missing a flight when he slept in his car. He denied doing so during the fact-finding meeting and was also charged with dishonesty. Bettinger noted, however, that the Company

applied just cause in considering his “satisfactory work history and tenure with the Company” to assess the appropriate penalty. The following day W failed to provision a flight and was given a Final Letter of Warning. Agent O was given a Letter of Instruction for leaving his work area from 1:00 P.M. until he clocked out at 3:28 P.M..

District 5 Representative Robert Bettinger also testified about arbitration hearings where the Union’s argument that the just cause provision of the CBA should be applied was upheld. In SAN-O-0602/11 Agent K was terminated for violating the Company’s unilaterally-implemented, zero-tolerance policy on a “Drug-Free Workplace” after he failed a random drug test. Arbitrator Randall M. Kelly considered K’s “long and excellent career without any discipline” in finding the termination was not for just cause. In SMP-O-2015-13 Agent N was terminated after testing positive for marijuana, with no consideration of his tenure or record. Arbitrator Franckiewicz found this to be a case for mitigation and reinstated N with no loss of seniority, contingent on his passing a return to work drug test.

On rebuttal, Ramp Supervisor Myatt, who worked at the Burbank station between 2004 and 2006, two years as an Agent and just under a year as a Supervisor, returned to Burbank in May 2015. He testified that if Ramp Agents are going to take a break and if they are going to leave and get food, they have to let a Supervisor know. They usually communicate face to face or by text message. He also said that employees are not allowed to immediately take a break upon reporting to work at 6:00 A.M.. They are supposed to be somewhere where supervision can find them in case there is some type of emergency or something happens, such as the T-point belt breaking. There can be an emergency needing all hands on deck and they must be able to have a headcount of where everyone is. Myatt said that on Sundays, which are slow, if they clock in and want to sit in the terminal or go outside for a cigarette or cup of coffee, as long as operational needs are being met, that is okay. But they have to be on the property and must ask if they are going to leave. This has always been the rule and employees know it. Employees are trained on the Basic Principles of Conduct, including time theft, and he has done that training.

Ramp Supervisor Yoda testified, on rebuttal, that he attended the fact-finding in this case and the Grievant stated that after clocking in he went back to his car and drove to the donut store, then returned and sat in the car having breakfast and waiting until 7:30 to go back to his job assignment. Yoda said he has been a Ramp Supervisor for 20 years and that is not an accepted practice at the Burbank station. Further, it is not a practice for employees to clock in and take as long a break as they want so long as they are back for their flight.

On rebuttal, MRO Boyle testified that, at the fact-finding, she asked the Grievant whether he had breakfast in his car or went to get breakfast. The Grievant stated that he left to get breakfast at Dad’s Doughnuts. When she asked how long that took the Grievant estimated about 15 minutes, after which he parked on Burton and stayed in his car. When she had spoken with him on June 14<sup>th</sup>, he said nothing about leaving or sitting in his car.

Labor Relations Manager Foster testified about the Agent M case, DEN-R-1330/11, in which Arbitrator William H. Lemons found that the Company had just cause for termination after, while working a second shift on overtime, M left the airport premises



**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 Company's Contentions

The Company contends that Southwest had just cause to terminate the Grievant because he committed time theft when he left the Burbank airport without permission for approximately two hours and was dishonest in violation of the Basic Principles of Conduct. The violated work rules were reasonable and were related to the safe and effective operation of the business. The termination of the Grievant for violating BPOC #40 is consistent with action taken in like cases, specifically, M and F.

The Company contends that BPOC #4 requires Ramp Agents to completely coordinate with their co-workers and their Supervisors. BPOC #7 states that dependability and punctuality are necessary and each Agent is "expected to be in or at your position and ready to work when... scheduled." BPOC #14 prohibits Agents from performing their jobs in a careless, negligent or unsatisfactory manner. These principles, and the fact that failure to comply will be grounds for disciplinary action from reprimand to discharge, are well published and all Agents are trained regarding their responsibilities. BPOC #40 states that "time theft will result in termination."

The Company contends that, in addition to the BPOC, the Grievant was given a Meal and Rest Period memo on August 30, 2010. That memo clearly stated that "meal and rest periods or any period of time that you are away from your area of responsibility will need to be coordinated with your Supervisor. Failure to abide by the contractual guidelines, may lead to discipline up to and including termination."

The Company notes that two Customer Service Agents reported to MRO Boyle that the Grievant had been absent for approximately two hours. Her investigation reveals that the Grievant's shift assignment was as Gate Assist on Gate A-4, and that he had been absent from

6:02 A.M. until 7:49 A.M., without the approval of any Ramp Supervisor. At the fact finding he admitted leaving the airport and driving to Dad's Doughnuts to pick up breakfast. Therefore, it is clearly established that he was getting paid during time he was not in or near his assigned work location, available and ready to work.

The Company contends that when Ramp Supervisor Arreola learned that the originator going to Denver on Gate A-4 had a total of 134 bags he went to the break room to notify the Grievant that they were going to start to load the flight early. The Grievant was not present and Arreola began assisting with loading bags. At around 8:00 A.M. he returned to the break room looking for the Grievant and made a radio call but received no answer from the Grievant or anyone who had seen him. Customer Service Agent "M" did hear the radio call and saw the Grievant walking through the baggage claim area.

The Company contends that although the Grievant's story has changed he consistently admitted he clocked in, immediately returned to his car, left the airport to eat breakfast, and was away from the airport and his work station for approximately two hours, while remaining on the clock. That absence exceeded the one hour maximum break time for meal and rest breaks combined specified in the CBA. By disappearing immediately after clocking in, the Grievant attempted to mislead the Company. He was first seen by Supervisor Arreola driving from Gate 6 after 8:00 A.M., and never provided names of any employee who could verify his whereabouts that morning.

The Company contends that theft is widely considered by arbitrators to be an offense worthy of termination, even when the theft involves items of nominal value and when the misconduct constitutes time theft. Such conduct takes away the Company's trust and confidence in its employees to do the right thing. Further, time theft is dishonest misconduct that negatively impacts fellow Agents, Southwest customers, and the financial prosperity of Southwest employees. Arbitrators usually do not require progressive discipline in theft cases.

The Company notes that, while the Grievant did not have discipline in his file for the most recent 12 months, the facts of this case show that he admittedly misrepresented his "perfect" attendance on the day of this incident and other occasions by clocking in and failing to immediately report to work. If the Grievant is returned to the workplace it would send the wrong message that conduct of this nature is acceptable and would negatively impact morale.

Finally, the Company contends that the Union has not met its burden of proving that the Grievant was treated in a disparate manner. Rather, the Union presented dissimilar and, therefore irrelevant, alleged comparators concerning conduct other than time theft. The cases cited by the Union illustrate the Company's reasonable disciplinary philosophy, i.e., that every incident must be separately examined. There is no indication in the record that the Company declined to terminate any other employee on exactly the same facts as were proved in this case. The distinguishing factors here include the gravity of the offense and the Grievant's lack of candor when questioned by MRO Boyle.

For the above reasons, the Company requests that the grievance be denied and that the

Company be awarded any relief to which it is entitled under the CBA.

### The Union's Contentions

The Union contends that the Company failed to prove it had just cause to terminate the Grievant. The Burbank station had a "relaxed take" on allowing employees to leave, without permission, to get meals and created an environment in which no reasonable employee would consider termination to be a possible punishment for doing so.

The Union contends that naturally-occurring periods of downtime are built into daily schedules and there is a long, mutually accepted history, of using such time for breaks. Customer Service Agent "M" initially testified that breaks are not taken in the first two hours, then acknowledged that breaks can occur earlier, depending on the flight loads and what is coming in. MRO Boyle acknowledged that there can be downtime, based off the flight schedule, for an Agent arriving at 6:00 A.M.. Ramp Agents consistently testified that it is a common practice for Agents to leave the property without permission to get coffee or meals. The Union notes that the 2010 Meal and Rest Period memo is not followed in practice and suggests that the Company send out a more current version in order to properly advise employees of the policy.

The Union disagrees with the Company that the Grievant was careless or negligent in his duties. To the contrary, the Grievant was productive and timely with his first flight of the day. That flight left early and the Grievant was in his assigned position at the time he was required to be there. The SIDA swipes show he returned to his work area 45 minutes prior to the departure of his flight.

The Union contends that the Company must demonstrate the Grievant intended to steal or commit a dishonest act. They failed to do so in this case. The Company's case in chief would have been much stronger had they elected to call Ramp Supervisor Arreola, who was present during the first day of arbitration. Gate Lead Y testified that he did not see Supervisor Arreola anywhere around the flight and it would have violated the CBA for him to load the back of the aircraft, as the Company asserts.

The Union contends that bargaining unit members have a contractual right to "just cause" notwithstanding the Company's unilaterally-promulgated rules. Thus, it was improper for MRO Boyle to fail to consider mitigating factors. Further, the Company has attempted to expand the definition of "time theft" – an offense for which intent must be proven – in order to apply it to simple job performance matters. It is apparent that the Company disagreed with Arbitrator Franckiewicz's decision and hope in this case to expand the definition of time theft.

The Union requests that the grievance be sustained, and that the Grievant be reinstated to his position as a BUR Ramp Agent, be paid lost wages and lost overtime and be made whole in every way.

**ISSUE**

Was the Grievant terminated for just cause? If not, what shall the remedy be?

### FINDINGS

The Grievant was terminated for allegedly violating four provisions in the BPOC:

4. Complete coordination with Coworkers and Supervisors is required to provide harmonious working conditions.
7. Dependability and punctuality are necessary. You are expected to be in, or at your position and ready to work when you are scheduled.
14. Performing your job in a careless, negligent, or unsatisfactory manner.
40. Time theft will result in termination.

It goes without saying that the Company has a legitimate expectation that employees will be at their proper work stations, on time, ready to perform their duties. The Company also has a legitimate interest in knowing where its employees are, both because they may be needed for a new assignment and for safety reasons.

MRO Boyle testified that she decided to terminate the Grievant, rather than to impose lesser discipline, because time theft always warrants termination and cannot be mitigated, and for his lack of honesty. It is not clear, on this record, how the Company differentiates violations of BPOC #7 from violations of BPOC #40. As discussed below, the Company has not consistently charged employees who leave their work stations without permission with time theft. The Company's reliance upon the M and F cases, in which the employees left the airport premises, seems to indicate that the employee's location is a critical feature separating a violation of #40 from #7. That difference, however, is not expressed in the BPOC and "time theft" is not defined.

A review of the disciplinary letters introduced by the Union establishes that the Company has not consistently terminated employees for a first offense of leaving the airport property without permission while on the clock. In the following instances the employee engaged in such behavior without being charged with time theft:

- In 2007<sup>3</sup> Agent V was given a Letter of Warning when he left work early and "gave the appearance of trying to get an extra hour of pay." (UX 12.)

---

<sup>3</sup> There is no evidence in the record as to when BPOC #40 was added to the Basic Principles of Conduct or whether that language, or similar language, was contained in the BPOC in 2007.

- In 2010 Agent P was given a Final Letter of Warning and five-day suspension after she left work without permission and without punching out, leaving no Operations Agent available to deplane passengers. The Union withdrew her grievance without prejudice. (UX 12.)
- In 2011 Agent W was given a Letter of Warning after he missed an assigned flight and was found sleeping in his car. (UX 12.)
- In 2013 Agent Q was given a Final Letter of Warning and three-day suspension after leaving his work position and taking his mother to dinner, being absent for nearly 4 hours during which he was being paid but his job duties were not performed. (UX 12.)

Notably, also, in each of those cases the employee failed to perform certain assigned duties. Here, as discussed in more detail below, the Grievant did perform all assigned work and he did so in a timely manner. As the Company argues, there may have been other factors in those cases that caused the Company to not charge the employees with time theft. Nevertheless, these cases show that not every such absence is treated as time theft.

A review of the discipline issued to employees who left the airport property and were charged with time theft, i.e., violating BPOC #40, reveals the following

- In 2011 Agent AA was terminated for time theft after he left work without permission on two occasions, for more than three hours. The Union withdrew his grievance after he confirmed that he had done so and admitted to using drugs. (UX 12.)
- In 2011 Agent M was terminated for time theft when, while working a double overtime shift, he left the airport to go to a store during his lunch break and thereafter performed no additional work. Arbitrator Lemons credited Company testimony that if he had been on the property he would have been found. He concluded that M claimed and received pay for time he had not worked and denied the grievance. (CX 17.)
- In 2013 Agent L was terminated for time theft after leaving work without permission for six and one-half hours. The Union withdrew his grievance at L's request. (CX 18.)
- In 2013 Agent I was terminated for time theft after leaving work without permission and being paid for that time. After initially claiming that the discipline was excessive because leaving was a "standard and accepted procedure in ORF [and that] no work was missed" the Union withdrew his grievance without prejudice. (CX 18.)
- In 2015 Agent F was terminated for time theft after he was found to have left work on many occasions while on the clock and without getting permission from his supervisor. Arbitrator Vernon denied his grievance, finding that he had absented himself from the workplace for more than 14 hours over 16 days and that he knew he had to have permission to leave. (CX 15.)

During cross examination the Union called into question the facts underlying the Agent L and I cases. The Company witness was unable to verify whether I had filled out an exception log stating he was there for a certain amount of overtime when he was not, or that L was seen on camera returning after six hours and writing in the overtime exception log that he had been present the whole time.

The differences between the M case and this one are significant. Agent M had been counseled by the Assistant Station Manager only three days previously and specifically instructed to not leave his duty location unless he first received permission from a supervisor. That counseling had taken place after M's co-workers complained that he had disappeared from his duty location and was not pulling his weight. The Company relies upon the 2010 Meal and Rest Period memo as the basis for its position that the Grievant had been instructed to obtain permission from a supervisor before leaving the premises. The weakness of that reliance will be discussed below. The Grievant, here, was widely praised by his co-workers for his work ethic and there is no evidence that he had ever been counseled about not being in his duty location. Further, Agent M did not perform any work for the remainder of the time he was on the clock, whereas the Grievant fulfilled all his duties on June 14th.

Agent F was found to have absented himself from the workplace, repeatedly, for personal reasons including having breakfast with his wife, getting forgotten medication, taking his car home so his wife could use it, and doing other personal errands. Arbitrator Vernon found that F knew he was required to have permission to leave, as demonstrated by the fact that he had asked, on several occasions, to leave work without pay (LWOP). Here, the Company based the Grievant's termination solely on the June 14<sup>th</sup> incident. It is noteworthy that the Grievant spent the bulk of the time in his car, parked so near the airport that he had a clear view of aircraft arriving at gates. He also had his cell phone with him and, had his Supervisor sent him a text or phoned, a common method of communication, he could have been present within minutes. Thus, the Grievant, but not F, promptly could have fulfilled any additional duties that his Supervisor needed to assign.

Adding to the confusion about when BPOC #7 governs an employee's conduct and when BPOC #40 controls is the Company's handling of the Agent T's case. In 2012 T was terminated for not being in his assigned work area (BPOC #7) and for time theft (BPOC #40), among other charges. He had not left the airport property. Arbitrator Franckiewicz found that T was not hiding out and attempting to receive pay for loafing, and that he had not engaged in dishonesty. Arbitrator Franckiewicz sustained the grievance in part, stating:

In summary, I conclude that Grievant T did not engage in a scheme to evade work on the morning of July 8. He did disregard the instruction on his schedule to See Coordinator, and he did make an unwarranted assumption that his ultimate assignment would be to Zone 2. But under that assumption, he had no work to perform until around 7:00 a.m., and under the practice then in effect, an employee with nothing to do was free to wait in the Concourse, as he did. Accordingly he had no motivation to lie, and did not lie, to Management in order to justify having avoided work: there was no work on that slow Sunday morning

for him to do. [UX 11, pg. 24.]

Where the Company has specified that violation of a rule is one of very few that merits immediate termination, the Company has an obligation to make it clear to employees precisely what behavior is being prohibited or required. Beyond conclusory statements that this was “time theft,” the testimony of Company witnesses in this case did not clearly differentiate between conduct covered by BPOC #7 and that covered by BPOC #40. Similarly, the record evidence here does not establish that the training the employees regularly receive on the Basic Principles of Conduct puts them on notice that getting paid while they are not in or at their assigned positions ready to work, even if their posted schedule shows no work for them to perform for a period of time, will be treated as time theft, subjecting them to immediate termination, rather than as a violation of BPOC #7, subjecting them to discipline up to and including termination.

Arbitrator Vernon noted in the F case that time theft “typically involves time card fraud where records are altered or falsified in some way to deliberately claim time not worked.” The Agent S case, cited by the Union, and the L and I cases, would appear to involve “typical” time theft.<sup>4</sup> This case does not. The Company relies upon the fact that the Grievant parked in the short-term lot as evidence of his intent to steal time. As discussed, below, such use of that lot was not uncommon.

Although Company witnesses testified that the 2010 Meal and Rest Period memo is the current practice at the Burbank station, the weight of the evidence is to the contrary. Similar to the T case, the testimony of Union witnesses was convincing that Supervisors and Managers were aware that, schedules permitting, Ramp Agents left the airport premises to get food at the various eateries located nearby, and that they did so without necessarily communicating their absence. This apparently has not caused operational problems because the Ramp Agents in the senior BUR crew take responsibility for checking their flight assignments and the early show schedule, and their Supervisors communicate via text and cell phone when they are needed for other duties.

MRO Boyle concluded that Supervisor Arreola utilized people to assist due to the Grievant being late to work flight #4039. Arreola’s statement does say that he had a floater, Lave Tech and Agent E take over loading in the rear. Those employees were not, however, brought in to assist because the Grievant was not there. Rather, H, G and E were scheduled on the early show to assist on Denver originator #4039. They did so, as planned, in the rear and the Grievant, as planned, assisted Gate Lead Y in loading the front bin.

Although Union witnesses testified that they did not hear a page for the Grievant, CSAs “B” and “M” credibly testified that they heard such a page as the Grievant walked through the

---

<sup>4</sup> Agent S logged hours he did not work and was charged with falsification of Company records, but not “time theft.” He was unanimously reinstated by the System Board. (UX 10.) There is, however, no evidence in the record that in 2001 the BPOC included #40, specifying the penalty of termination for time theft.

baggage claim area. It was that observation, and his lengthy absence, that prompted them to contact MRO Boyle. Arreola's radio call looking for the Grievant thus would have occurred shortly before 7:49 A.M., when he swiped his badge to reenter the double doors leading to the ramp area. The purpose of Arreola seeking out the Grievant was simply to let him know that Ramp Lead Y was starting to load the flight early, however, not to give him an additional assignment.

Significantly, there is no evidence that the Grievant failed to work his originator in a timely manner, i.e., 45 minutes before scheduled departure. The Grievant's first duty was to ice the plane, which required access to the cabins. The un rebutted evidence established that it was not possible for the Grievant to do so until the TSA seals were removed, even if Ramp Lead Y was starting the bag-loading process early. Ultimately, the flight pushed early.

MRO Boyle's decision to terminate the Grievant was influenced by what she found to be his lack of honesty. Despite his explanation that her questions were vague and casual, the Grievant, plainly, was not forthcoming about his whereabouts for the first two hours of his shift when he was initially questioned.

The fact that it is not a rare occurrence for Agents, Supervisors or Managers to park in the parking structure, punch in, and then move their cars, does not justify the Grievant's absence from the premises for nearly two hours. He did not return to his work area after moving his car. Union Representative X acknowledged, on cross examination, that there is not a practice for an employee to clock in, leave the premises, and stay gone for one hour and 45 minutes. Ramp Agent Z testified that he has never gone to his car for two hours.

Given that the duration of his absence exceeded the normal break time for employees getting breakfast at the start of a slow Sunday-morning shift, the Grievant's reticence when questioned and his denial at arbitration that he had driven to Dad's Donuts can only be viewed as an attempt to avoid responsibility for his action. The Grievant's testimony that both MRO Boyle and Ramp Agent A misheard him was simply not credible. His explanation that, had he not been in his car, he could very well have been in Denny's eating breakfast, does not excuse the extended duration of his absence. There is a significant difference between taking an early morning break to pick up food or eat breakfast, and remaining out of the work area for nearly two hours.

The Grievant's conduct in this instance does not equate to time theft. His use of the short-term lot to park while he punched in was not unusual for an employee who was running late and is not evidence of intent to steal time. Driving to Dad's Donuts, a trip that took approximately 15 minutes, was not appreciably different from walking to one of the nearby eateries. The Grievant was on time for his first flight and performed all his assigned duties. The originator, despite the heavy load, pushed early. The Grievant's Supervisor's attempt to contact him slightly before his regular reporting time was not to give him an additional work assignment. Thus, the Grievant did not intend to nor did he evade work while getting paid.

For the above reasons, the Company has not established just cause for terminating the

Grievant for time theft. Therefore, this grievance will be sustained and the Grievant will be reinstated with full seniority.

By absenting himself from the work area for nearly two hours, contrary to the limited practice of employees taking an early break when light Sunday schedules permit, the Grievant was in violation of BPOC #7. Given the Grievant's long tenure, a Letter of Instruction is a reasonable penalty for this offense, one that should be sufficient to encourage the Grievant to improve his behavior.

Finally, as discussed above, the Grievant was not honest about his whereabouts when initially asked and, at arbitration, attempted to disguise the fact that he had driven away from the airport property to get his breakfast. He should not benefit from such behavior. Therefore, the Grievant's reinstatement will be without back pay.

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

#### **AWARD**

The grievance is sustained and the Grievant will be reinstated with full seniority but without back pay. The Grievant shall be issued a Letter of Instruction for absenting himself from the work area for nearly two hours, contrary to the limited practice of employees taking an early break when light Sunday schedules permit, and in violation of BPOC #7. In accordance with Article Twenty, Section One, Paragraph C, the costs of the arbitration shall be borne by the Company.

A handwritten signature in cursive script, reading "Elizabeth Neumeier", followed by a horizontal line.

Elizabeth Neumeier, Arbitrator  
February 22, 2016