VOLUNTARY LABOR ARBITRATION TRIBUNAL
Before George T. Roumell, Jr., Arbitrator

In the Matter of the
Arbitration Between:

SOUTHWEST AIRLINES CO.

-and-

Agent A / Termination
BWI-R-0983/17

TRANSPORT WORKERS UNION
LOCAL 555

ARBITRATOR'S OPINION AND AWARD

APPEARANCES:

FOR SOUTHWEST AIRLINES CO.:

Joel Bagby, Attorney
Vance Foster, Labor Manager
Laura Armstrong, Paralegal

FOR TRANSPORT WORKERS UNION LOCAL 555:

Gerald (Jerry) McCrummen, Grievance Specialist
Curtis Clevenger, Grievance Specialist
Morial Hayes, Witness
Agent A, Grievant

The Termination Letter and Grievance

On April 17, 2017, Agent A, Employee XXXXXX, employed as a Ramp Agent at the Baltimore Station, received the following letter of termination:

> SUBJECT: TERMINATION - ARTICLE TWENTY-THREE - ATTENDANCE
>
> As you are aware, Article Twenty-Three of the contract between Southwest Airlines and The Transport Workers Union Local 555 provides in Section II, Paragraph B: It is the responsibility of the Employee to know the status of his point accumulation. However, the Company shall be responsible for notifying an Employee receiving a chargeable occurrence for absenteeism/tardiness of the following disciplinary action as the occurrences accumulate:

Less than 1 point	No action taken
1-2 ½	Letter of Instruction
3-4 ½	Warning Letter
5-5 ½	Final Warning
6 or more	Termination

> In accordance with Article Twenty, because of your total point accumulation of six or mote points, you have been given the benefit of a fact-finding meeting. Due to your occurrences on April 3, 2017, your point accumulation as of these occurrences is 7.0 points. As a result of the fact-finding meeting, your employment is hereby terminated. (Underscoring in original.)

On April 17, 2017, Agent A grieved his termination, stating:

> Employee Statement of Grievance: Agents termination is excessive, unjust and without merit
>
> Remedy or Settlement Sought: Respectfully request that agent be reinstated with no loss pay and no loss in seniority and for the agent to be made whole in every way.

Following the denial of the grievance by Company representatives and a deadlock System Board of Adjustment, the grievance was moved to arbitration.

Issues Presented

Except for slight variation in wording between the parties, there is agreement that the issues presented are:

Did Southwest Airlines have just cause to terminate Agent A? If not, what if any should be the remedy?

Relevant Contract Provisions

The contract provisions in the parties' February 19, 2016 through February 18, 2012 Collective Bargaining Agreement that are relevant to this dispute include:

ARTICLE TWO
SCOPE OF AGREEMENT
* * *

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

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

* * *

ARTICLE TWENTY
GRIEVANCE/SYSTEM BOARD/ARBITRATION
DISCHARGE AND DISCIPLINE

SECTION ONE
PROCEDURES

A. Purpose. No Employee who has passed his probationary period shall be disciplined to the extent of loss of pay or discharge without just cause.

* * *

ARTICLE TWENTY-THREE
ATTENDANCE

A. Purpose. The Company and the Union recognize that habitual absenteeism and tardiness adversely affect operations and morale. The purpose of this program is to control the attendance of Employees in a constructive manner and within the framework of progressive disciplinary procedures. In order to avoid the accumulation of occurrences, it is recommended that, in the event Employees require time off, they should, to the degree possible, secure trades with other Employees, request vacation time, or, where appropriate, request a leave of absence. Using sick leave or sick pay for a purpose other than that intended constitutes abuse. Abuse of sick leave or sick pay shall warrant immediate termination.

SECTION I
ATTENDANCE PROGRAM

DEFINITIONS

* * *

E. Unreported Tardy. Any Employee who reports to work within one-half (1/2) hour after the start of his shift and did not notify local management that he was going to be late prior to his shift beginning shall be charged with an Unreported Tardy.

1. Within ½ Hour Window. If the Employee did not notify the local management that he was going to be late prior to his shift beginning, but notifies the local management within one-half (1/2) hour after the beginning of his shift, the Employee shall be allowed to report to work, provided he reports to work within one hour and thirty minutes (1:30) past the beginning of his shift. Otherwise he shall be sent home without pay and charged with a No-Show (Unreported Absence).

SECTION II
CONTROL PROCEDURES

A. Recorded Occurrences. Absences and tardiness on scheduled workdays, overtime, training, trades, or holidays shall be recorded in the following manner:

No-Show (Unreported Absence)	2	
Reported Personal Absence (Personal Business)	1	
Reported Illness (Non Chargeable)	0	
Four (4) doctor's statements per calendar year, but no more than one (1) November 1 -- January 3		
Reported Illness (Chargeable) (No doctor's statement or after utilizing allowable number of doctor's statements for Non Chargeable Reported Illness	1	on the first day and ½ for the third consecutive day, and ½ point for each day thereafter, to a maximum of 2 per single continuous illness
Unreported Tardy	1	

Reported Tardy ½

B. Point Accumulation. The Company shall be responsible for notifying an Employee receiving a chargeable occurrence for absenteeism/tardiness of the following disciplinary action as the occurrences accumulate:

Less than 1 point	No action taken
1-2 ½	Letter of Instruction
3-4 ½	Warning letter
5-5 ½	Final warning
6 or more	Termination

D. Record Improvement. For each non-cumulative ninety-day (90) period during which an Employee works without any chargeable occurrence, two (2) points shall be deleted from the Employee's accumulation until the total reaches a maximum of minus 7 (-7).

Background

Agent A was hired by Southwest on February 14, 2016 as a Ramp Agent in BWI (Baltimore). As noted, Agent A was terminated on April 17, 2017 for accumulating six or more points pursuant to the parties' negotiated attendance program set forth in Article Twenty-Three.

Agent A's attendance record is summarized in Company Exhibit 5 which reads:

Date	Attendance Event	Points	Total	Notes
2/4/16	Hired	0	0	
2/26/2016	Reported Tardy	.5	.5	1st Probationary Letter
2/28/2016	Previous CBA Yearly Record Improvement	-.5	0	
3/16/2016	Ratification Roll-off Record Improvement	-3	-3	
4/27/2016	Unreported Tardy	1	-2	2nd Probationary Letter
7/26/2016	Record Improvement	-2	-4	
8/21/2016	No Show	2	-2	

8/21/2016	Unreported Tardy	1	-1	
8/26/2016	No Show	2	-1	Letter of Instruction (8/28)
9/4/2016	Unreported Tardy	1	2	
12/3/2016	Record Improvement	-2	0	
12/18/2016	Reported Tardy	.5	.5	
12/24/2016	Unreported Tardy	1	1.5	Letter of Instruction (12/27)
1/28/2017	Reported Tardy	.5	2	
2/3/2017	No show	2	4	Warning Letter (2/5)
2/4/2017	Unreported Tardy	1	5	Final Warning Letter (2/6)
2/27/2017	Unreported Tardy	1	6	Point Adjustment Agreement / Final Warning (3/14)
4/3/2017	Unreported Tardy	1	7	Termination Letter [1]

The reference to the minus three points, "Ratification Roll-off Record Improvement" is the fact that, as a result of ratifying the February 19, 2016 - February 18, 2021 Agreement, the Ramp Agents received a credit of three points which in Agent A's case meant that as of March 16, 2016 he had a minus three points on his record.

Likewise, the record improvement was to Article Twenty-Three, Section 2.D, "Record Improvement", namely, "For each non accumulative ninety (90) day period which an employee works without any chargeable occurrence, two (2) points shall be deleted from the employee's accumulation until the total reaches a maximum of minus seven (-7). This meant that, as a result of the three point roll off due to the ratification of the 2016 contract and a 90 day record of improvement, Agent A by July 26, 2016 had a total of minus four points. Under the

[1] During the hearing, the Union Advocate stated that he had never seen the above summary. (Tr. 87). However, the summary represents Southwest's position as to the file review of Agent A represented by Company Exhibits 6 and 7. The Union's version as to Agent A's attendance/tardiness record is set forth at page 13 of this Opinion.

provisions of said Paragraph D, he could go down from minus seven.

Beginning on April 21, 2016, Agent A began accumulating points. On December 3, 2016, due to a 90 day improvement, he had reached the zero point level. Agent A, as the summary indicates, had received a letter of instruction concerning attendance on August 28, 2016. Following December 3, 2016, Agent A began a period in December/January of tardiness which he claimed was due to not having a vehicle because of an auto accident. During this period, Agent A received another letter of instruction concerning tardiness on December 27, 2016 when he had accumulated 1.5 points.

On February 3, 2017, Agent A had a no show, resulting in a charge of two points for a total of four points. On February 5, 2017, Agent A received a warning letter following the no show on February 3, 2017.

On February 4, 2017, Agent A was unreported tardy, meaning he did not call in prior to arrival and was at five points. On February 6, 2017, he received a final warning letter.

On February 27, 2017, Agent A was an unreported tardy, resulting on one point, meaning his total points were six points.

On March 14, 2017, Agent A, along with T.J. Cameron, SSO Employee Service Lead representing Southwest and Representative B, representing the Union, signed what Southwest refers to as a Point Adjustment Agreement and the Union refers to as a point adjustment letter, which reads:[2]

TO: Agent A #XXXXXX
FROM: T J Cameron, SSO-Employee Services Lead

[2] Throughout this Opinion, for convenience, the reference will interchangeably be Point Adjustment Agreement or Point Adjustment Letter.

DATE: Tuesday, March 14, 2017
SUBJ: Adjustment to Point Total

After review of your attendance record, some discrepancies were discovered. Your attendance record has been corrected to reflect a new point total.

As a result of this correction to your Attendance Record, it is understood and agreed that you are at Final Letter of Warning Status as defined by Article Twenty-Three of the contract between Southwest Airlines and the Transport Workers Union Local 555.

Your new point total is 6.0 and there is no dispute with regard to this point total and letter status.

T.J. Cameron Date: 3/14/17
Supervisor/Manager

Acknowledgement of Receipt:

Agent A Date: 3/14/17
Employee Signature

Representative B Date: 3/14/2017
Union Representative Signature

cc: Station Director
Station Manager
Employee Resources
Union Representative
File
(Underscoring in original.)

The Point Adjustment Agreement followed a fact finding meeting on March 8, 2017 as provided in Article Twenty, Section 1.G. The February 27, 2017 unreported tardy meant that Agent A was at the termination level. However, at the March 8, 2017 fact finding meeting, Agent A's Union representative questioned whether he should have received a final warning letter on February 6, 2017, one day after receiving a warning letter on February 5, 2017. (Tr. 181).[3] As

[3] "Tr." is a reference to the transcript of the arbitration hearing.

a result of the challenge concerning the rapid succession of the warning letter of February 5, 2017 and the final warning letter of February 6, 2017, the parties, one week later, entered into the Point Accumulation Agreement dated March 14, 2017.

Testifying for Southwest was Joseph DePaolis, a former Station Service Manager and now one of the Assistant Station Managers in Baltimore overseeing day-to-day operations. (Tr. 76). Mr. DePaolis testified that Agent A grieved the letter level, but not the points. (Tr. 92). There were arguments about whether there are oral grievances under the contract. The fact is Agent A made his complaint known to management. *See,* Article Twenty, Section 20.L.1. Mr. DePaolis acknowledged that the dispute "was due to rapid point accumulation". (Tr. 93). As a result, Mr. DePaolis stated that the Point Adjustment Agreement as set forth above was entered into and Agent A was not terminated as a result of accumulating six points. Mr. DePaolis testified that Point Adjustment Agreements have been utilized at Baltimore for the 11 years that he has been at Baltimore. (Tr. 95).

As noted, the point adjustment letter signed by Agent A indicated that he was at a Final Warning letter with a point total of "6.0". Company Exhibit 1 set forth examples of numerous Point Adjustment Agreements signed by various employees, Union representatives and Management representatives in 2016 and 2017 at Baltimore.

Agent A's regular work schedule was from 5 a.m. to 1:30 p.m. (Tr. 183). Prior to his shift beginning at 5 a.m. on April 3, 2017, Agent A voluntarily picked up a shift from 9 p.m. April 2 to 2:15 a.m. April 3, 2017. This gave him two hours and 45 minutes between shifts. (Tr. 183).

Upon finishing the shift ending at 2:15 a.m., April 3, 2017, Agent A went to the

dispatch break room located in the airport terminal and went to sleep. Agent A overslept in the break room. (Tr. 101). As a result, he did not clock in to work until 5:19 a.m. In other words, he was 19 minutes late in starring work on his 5 a.m., April 3, 2017, shift. (Tr. 184).

Agent A was given a fact finding notice for April 11, 2017. There was an extension by the parties resulting in a fact finding meeting on April 17, 2017. As the tardy was unreported, Agent A had been assessed one point, putting him at seven points. Thus, Agent A was terminated on April 17, 2017.

Discussion

There is no dispute that Agent A was aware of the point system for attendance for, as early as February 5, 2016, he is signing documents explaining the program. There is also a training record indicating he was subject to attend the training on the procedures as to attendance among other procedures. *See, e.g.,* Company Ex. 7.

The thrust of the Union's argument as to the attendance control points is succinctly set forth in the following statement in the Union Advocate's post-hearing brief:

> 1) SWA violated the Michelle Jordan Memorandum that was written on January 16, 2008 as part of the implementation agreement because of the precedent-setting Agent B arbitration. SWA had no valid FWL in Agent A's file since the letter level must be accurate and the points must be accurate through the end of business the day before, both violations of the memorandum.

The referenced Jordan memorandum reads:

MEMORANDUM

TO: All Provisioning Managers and Station Managers; Assistant and Department Managers; and Provisioning, Ramp and Operations Supervisors

FROM: Provisioning and Ground Operations Employee Resources

DATE: January 16, 2008

SUBJECT: TWU Arbitration Decision / Attendance Control Program - Steps of Discipline (Attendance Letters and Points)

As a result of a recent TWU Arbitration decision, this communication will explain changes in the administration of our Attendance Control Program, specifically Steps of Discipline as related to Attendance Letters and Points.

Effective immediately we will only issue one disciplinary letter under the Attendance Control Program at a time. The letter must reflect the proper discipline level, i.e., warning, final warning, etc. and the Employee's "current" point total through the end of business the day prior to the letter being signed by the Employee.

For example:
The Employee is at 2.5 points
Sun - Sick Call = 1 point Employee now at 3.5 points
Mon - No Show = 2 points Employee now at 5.5 points
Tue-work
Wed - work - Employee is issued a **Warning Letter at 5.5. points** which is the total point accumulation as of the end of business on Tuesday.

Please understand that rapid accumulation may cause the point totals to be higher than the discipline level of the letter the Employee is being issued, which is acceptable. It is imperative that all discipline letters are issued in a timely and accurate manner.

Prior to having an attendance letter signed by the Employee, you must ensure the following:

- **The level of discipline, i.e., warning (LOW), final warning (FLOW), etc. is accurate.**

- **The point total is up to date through the end of business on the day prior to the letter actually being signed.**

If you receive a Kronos generated letter that has either incorrect point totals, or the level of discipline (LOW, FLOW etc) of the letter is not applicable, then issue a manual letter with the corrected and verified information. Fax all invalid letters back to A&L, along with the letter you generated manually. Be sure to draw a single line through the invalid letter, and include a Station Payroll/Attendance Discrepancy

outlining the reason(s) we issued a manual letter (i.e., "rapid accumulation"), so that Kronos is updated accordingly. Attached you will find revised Attendance Letter Templates. Use only the revised versions going forward. Manual letter templates will be posted on the Administration Section of your respective department's website in the near future.

Thanks again and please call your respective Employee Resources Department should you have further questions.

Copy to: Mike Ryan Matt Hafner Kim Guehistorf
Scott Halfmann Teresa Laraba Station Administrators
Chris Wahlenmaier Station/Provo Directors

The Union's position was explained on the record by Curtis Clevenger, a Southwest employee, who for the last 12 years has been on Union leave as a Grievance Specialist as well as being on the negotiating committee for the 2016-2021 contract. (Tr. 200). Mr. Clevenger testified that the letter issued on February 5, 2017, namely, the Letter of Warning, referenced four points when in fact Agent A had five points; that the Final Warning letter issued on February 6, 2017 indicated that Agent A was at five points. Mr. Clevenger went on to testify that the letter of February 27, 2017 listed Agent A at six points when, as Mr. Clevenger viewed the situation, based upon the Jordan Memorandum, previous letters were incorrect and did not list the "total points accumulation as of the end of business" the day before. (Tr. 215-220). In this regard, Mr. Clevenger testified:

THE WITNESS: This is -- this is absolutely not unusual. This is the way we do point reviews.

THE ARBITRATOR: Yeah. But shouldn't he be at 5, then, on – on 2/27?

THE WITNESS: He would have been until they gave him the letter that was wrong again. They gave him another letter that they know is wrong. And basically all it did, with the way they did it at the station, is they got a do-over on the final, right?

> But they didn't get -- they didn't fix the points, and they issue another letter that's got him at the wrong point status. They're telling a man this is where you're at in points, and they're giving him another letter that they know the point level is wrong on. So that occurrence goes -- whatever occurrence generates the letter, if it's not accurate, goes away. That's why he stayed at four there.
> (Tr. 219).

Mr. Clevenger's explanation of what the Union considered an error in the point accumulation letter was set forth in the following Union Ex. 8:

Agent A Attendance
Time Line

DATE	TYPE	POINTS (+/-)	TOTAL	CORRECT
2/4/16	D.O.H.			
2/26/16	RT	.5	.5	
2/29/16	February Roll Off	-.5	0	
3/16/16	CBA Ratification	-3	-3	
4/27/16	URT	1	-2	
7/26/16	Record Improvement	-2	-4	
8/21/16	NS	2	-2	
8/21/16	URT	1	-1	
8/26/16	NS	2	1	
8/28/16	Letter of Instruction Emailed at 1 point			
9/4/16	URT	1	2	
9/26/16	Retracted URT (3)	1	2	
12/3/16	Record Improvement	-2	0	
12/18/16	RT	.5	.5	
12/24/16	URT	1	1.5	
12/28/16	Letter of Instruction signed for at 1.5 points			
1/28/17	RT	.5	2	
2/3/17	NS	2	4	
2/4/17	URT	1	5	4
2/5/17	Letter of Warning signed for at 4 points			
2/6/17	Final Letter of Warning signed for at 5 points			
2/27/17	URT	1	6	4
3/14/17	Issued a Point Adjustment Letter for 6 points			
4/3/17	URT	1	7	5
4/17/17	Termed at 7 points		7	5

It was on this basis that the claim that the Jordan memorandum was not being followed.

The referenced Agent B award is a decision by Arbitrator Kelly in regard to the

termination of *Agent B, ORL MCO-B-O147/07* (2007). In that case, Arbitrator Kelly found that the issuance of the written warning and the final warning on the same day was erroneous, but concluded that it was not prejudicial and upheld the discharge.

Southwest responds by relying on the Point Adjustment Agreement signed on March 14, 2017 by Agent A, by T.J. Cameron on behalf of Southwest and by Representative B representing the Union.

Southwest notes that the March 14, 2017 Point Adjustment Agreement which the Union Advocate referred to as a PAL Point Adjustment Letter is a binding agreement, announcing that Agent A was on a Final Letter of Warning and that his new point total was "6.0" and "there is no dispute with regard to the point total and letter status". The Agreement also reads, "It is understood and agreed".

It is true that above the signatures of Agent A and Representative B there is the statement "acknowledgment of receipt". However, as this Arbitrator views the point adjustment document, it can only be interpreted as a binding agreement as it was signed by all interested parties. The nomenclature Acknowledgment of Receipt does not change the agreement. The term "acknowledgment" can only be interpreted to mean that Agent A and his Union representative, who had successfully argued that there had been a rapid point accumulation represented by the close succession of the February 5 and 6, 2017 letters, thereby successfully avoiding the termination at the time of Agent A, agreed that there was no dispute concerning the 6.0 point accumulation or the Final Letter of Warning. This is the only way, given the context, that the "acknowledgement" language can be interpreted.

At the time, Representative B had been a Union representative at Baltimore for about four

months. There was a suggestion that he did not have authority to sign the Point Adjustment Agreement; that issues of point accumulations are determined at the district level by Union grievance specialists and officers familiar with policy and arbitration awards.

The difficulty with such an argument is there was introduced into evidence a number of Point Adjustment Agreements signed by local Union representatives at Baltimore. To repeat, the fact is on March 14, 2017 a Point Adjustment Agreement came about as a challenge by Agent A and his Union representative that the Final Letter of Warning issued on February 6, 2017 should not have been considered.

As to the Jordan Memorandum, Vance Foster, a Manager in Labor Relations at Southwest, acknowledged that as to Agent A in regard to the February 5 and 6, 2017 letters, Southwest did not follow the Jordan Memorandum. (Tr. 53-54). However, Mr. Foster explained after so testifying that this failure was the reason for signing the Point Adjustment Agreement for he testified:

> A Which letter are you referring to?
>
> Q The Final Letter of Warning on 2/5 – he signed on 2/6. The Letter of Warning he signed on 2/5.
>
> A Is – is that letter accurate? It – it did not follow this memo. It's not accurate. Which is why there was a point adjustment agreement that was agreed to by the local rep and the leader subsequent to that.
>
> (Tr. 53-54).

This testimony highlights that the March 14, 2017 Point Adjustment Letter was in fact an agreement to resolve a dispute at the local level involving concerns about the Jordan Memorandum.

In this regard, Southwest did introduce into the record a 2014 decision by Arbitrator Gil

Vernon involving termination and point accumulation in *Case No. SFL-R-0788/14 Agent C).* In that case at the San Francisco Station, there had been a point accumulation agreement signed at the local level by local management representatives, the grievant and a local Union representative, which contained identical language to the agreement at issue here where the individual point status was set at 3.5 and it was announced that the individual was on a warning letter status. Eventually, the individual was terminated for point accumulation. There was an argument over whether the points that were accumulated, including points prior to the Point Accumulation Agreement, were covered by FMLA or excused because of the medication the grievant was taking.

After analyzing the FMLA and medication issues and concluding that the points accumulated prior to the January 26, 2014 point accumulation agreement could not subsequently be challenged, Arbitrator Vernon at page 12 wrote:

> Grievant has other hurdles to the argument that the October points should have been reversed. This relates to his agreement in January that only a one-point reduction should have been made. Thus, as a matter of contract and estoppel he cannot validly claim later the other points weren't proper. ...

This Arbitrator agrees with Arbitrator Vernon's analysis, namely, that the Point Accumulation Agreement signed by Agent A as well as his Union representative and a Management representative was a binding agreement that resulted from a dispute over the application of the attendance control program as applied to Agent A's situation.

There was the argument that pursuant to Article Twenty, Section L, the agreement could not be precedential. The language does read, "Decisions made pursuant to step 1 through 3 below shall not constitute precedent of any kind unless agreed to in writing by the Union and the

Company". The Point Accumulation Agreement was a written agreement. There was an argument whether this was a grievance settlement, but the fact is Agent A had complained orally about the final letter. After arguments that there were no oral grievances, Mr. Clevenger acknowledged on the record that before a grievance was put in writing an individual could present a grievance orally before being put in writing. (Tr. 276-267).

This Point Accumulation Agreement was made in response to his complaint, whether one calls it an oral grievance pursuant to the contract or a complaint. Thus, the arguments challenging the Point Accumulation Agreement on these facts is not persuasive so that Agent A had seven points as a result of his April 3, 2017 19 minutes late to his 5 a.m. starting time shift because his tardiness was unreported. In other words, because of the Point Accumulation Agreement, Agent A cannot challenge the previous six points due to the Point Accumulation Agreement.

In presenting this grievance, there was much to say about arbitral precedent. The arbitral precedent presented did not involve a signed Point Accumulation Agreement in any of the cases cited. These cases involved the failure to follow progressive discipline by leap-frogging, the failure to timely issue a letter of warning, the failure to notify the grievant following a change in contract of the effect of the change, and challenging the issuing of a final letter of warning and termination on the same day. *See, Agent D 3:07-CV-0126-P; Agent E HOU-R- 0361/91; Agent F HOU-P-0119/93; Agent G LAS-R-0028/99* and *Agent B MCO-P-0147/07.*

The second approach to the challenge of the termination of Agent A was in the following argument in the Union Advocate's brief:

> ... This erroneous application of the ACP for this incident instead of charging him with a job performance deficiency. BWI management should of progressively disciplined Agent A for a job performance issue and/or a no punch under the appropriate policy. Agent A picked up 5: 15 hours from 4/2/17 into 4/3/17, that is proven and documented by the acknowledgement and testimony of all the witnesses. Agent A, due to the less than 3 hours before the start of his next shift slept in the dispatch room in the SIDA area at the airport. Agent A never left the airport, he didn't travel from home. He was in his work area, an area with no alarm, he was just asleep. ...

After so writing, Union Counsel noted:

> 3) The "alleged" Unreported Tardy (URT) that was improperly assessed for April 3, 2017, due to him being asleep in the SIDA (Secure Identification Display Area), when objectively and properly viewed, should have been a job performance issue or disciplined under the No Punch policy at SWA. SWA failing to do so would be disciplining l Agent A in a discriminatory manner. [Union Exhibit #9]

The response of Southwest's Counsel was essentially that, regardless of where Agent A slept, be it at home, in his car, or at the airport, he did not report to work at the assigned 5 a.m. on April 3, 2017 until 5:19 a.m. As was pointed out, Agent A had an unreported tardy, bringing his point total to seven, beyond the termination range in the contract. Southwest Counsel argued that this could not be considered a performance issue for Agent A was not sleeping on the job after punching in and thereby being subject to Management's supervision. Instead, Counsel noted that Agent A was sleeping on his own time, not subject to Management's supervision and there was no violation of a no punch policy because Agent A did punch in.

Any way this Arbitrator reviews the situation, the fact is Agent A was bound by the Point Adjustment Agreement that he signed on March 14, 2017 putting him on final warning and at a six point level. When he was tardy on April 3, 2017, Agent A went up to seven points. Pursuant to Article Twenty-Three, Section II, "Control Procedures", Paragraph B, Agent A by contract, having seven points, could be terminated. The suggestion as just pointed out that he be

disciplined under a job performance issue or no punch policy does not apply under these facts.

It is based upon this analysis that the grievance will be denied.

AWARD

The grievance of Agent A is denied. Pursuant to Article Twenty, Section 1.C, a the grievance was denied, the Arbitrator's fees and expenses shall be born by Local 555.

GEORGE T. ROUMELL, JR.
Arbitrator

November 3, 2017