On cross examination, the Grievant said that he did provide detail at the fact-finding, about the webbing being down and needing to hook it up. He did not recall being asked why he was putting it up. He said that he found bins like that on originators a majority of the time, because maintenance leaves it in that condition.

Alternate Representative ; testified that he has participated in a dozen fact findings with Station Manager Westermajer and this one got very heated. He said that Westermajer was frustrated, upset, pointed his finger, and raised his voice. While they were looking at the video, Westermajer asked the Grievant who cut the wires and when the Grievant said that he did not know Westermajer said "sure you don't" and later accused him of lying. X said he found Westermajer's behavior aggressive, corporate security was there, and it was a whole different atmosphere from regular factfinders.

Representative Z, who has worked as a ramp agent for 22 years, 20 at DAL, testified that he has seen the Grievant and spoken to him once or twice, in passing. In preparation for the arbitration hearing he reviewed the videos. Z said that, with the start strong initiative, the Company wants originators to depart on time, or even five minutes early. For an 800-series aircraft, arriving more than one hour early is not a bad thing. The gate lead is responsible for paperwork, and getting the plane ready to start loading. This includes opening the bin doors and checking to make sure nothing is left over from the night before. TSA requires a security sweep of the lav doors, water service door, and bins. Z said that the bin on the 800 is extremely long, the sides by the door are curved and the floor tapers downward. He would have to undo at least the bottom part of the webbing to lift it up and look inside to get a full picture of the bin. If the webbing was down or partially down, he would have to pull it off to the side or fold it back the other way. Z saw nothing in the video that was inconsistent with his experience working originators. He disagreed with Company testimony that strapping the webbing should not take more than 40 or 45 seconds and said that 4 ½ minutes would not be unusual if the webbing was all undone. Z also testified that agents will wait in the bin because they know more bags are coming, often longer than 2 ½ minutes. At the arbitration hearing, watching the video of the Grievant with the stroller, Z testified that the Grievant was undoing the webbing because the webbing should already be up, "because obviously they're ready for push time." He said that, from the Grievant's body language and the way he was moving his arms, he assumed that the Grievant undid the two bottom buckles of the door, and the top ones right above it, and slid the stroller into bin A. Then he secured the webbing and shut the door. This happens hundreds of times throughout the day, just at DAL, because agents end up putting some last-minute item on the plane. Z testified that he knew that the doors have sensors, but he did not know where they are located on particular aircraft. Regarding the portion of the video when the Grievant removes something from the bin, Z testified that it could have been a piece of trash, cardboard or kneepads. He saw nothing suspicious or unusual in the Grievant's behavior.

On cross examination, Z reiterated that it could take four minutes to buckle webbing, depending on what a tangled mess it was. He said that if he thought the Grievant cut those wires or pulled those wires he "wouldn't be sitting in this chair today." On a 24-hour operation there are multiple groups of people around the airplanes throughout the night, e.g.,

TSA, contract cleaners, Company cleaners, mechanics, and ramp agents.

Representative W testified that he reviewed the five video clips and said that staying in a bin for 2 ½ minutes is not unusual because after downloading bags you know that other commodities will show up. There is no reason to get out and then have to get right back in. W also testified that it is normal to snap up the webbing in the three bins in the aft of an 800-series aircraft and have them ready to go, while leaving F bin or D bin open. He said that he has been in that bin longer than four minutes at times. On originators, they must clean out anything left in the bin. W said that the Grievant's behavior looked really normal. Further, he saw nothing unusual about the Grievant putting the stroller on the plane. His body was facing the bin webbing that he had unbuttoned to slide the stroller into the bin. Then he buttoned it back up and closed the door. W said that he had met and talked with the Grievant, who expressed that he was happy he made it off probation, and said how much he liked the job and how he appreciated what W and the Union did in helping get information. W described him as a very happy, easy-going guy, someone he would consider a good worker and good employee. When he learned of the Company's accusations, he absolutely could not believe it, it did not make sense, and he tried to make sure they were talking about the right guy.

On cross examination, W acknowledged that he could not see the Grievant buttoning the bin webbing after placing the stroller in the bin. One hand is on the side of the airplane, and the other hand was inside, either moving the stroller or moving the bin webbing.

RELEVANT PROVISIONS OF THE COLLECTIVE BARGAINING AGREEMENT

ARTICLE TWO
SCOPE OF AGREEMENT

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

* * *

D. **Management Rights.** The right to manage and direct the workforce, 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.

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

* * *

L. **Interpretation/Application of Agreement.** In the event of a grievance arising over the interpretation of, or application of, this Agreement, or in the event of disciplinary action other than discharge, the following steps shall apply. However, if the action involves discharge or a Union grievance concerning a change in Work Rules, it shall proceed to sub- paragraph 3, below. Decisions made pursuant to Steps 1 through 3, below, shall not constitute precedent of any kind unless agreed to, in writing, by the Union and the Company.

* * *

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 intentionally sabotaging an aircraft is grounds for termination. Therefore, the crux of this case is whether it was the Grievant who severed the wires of the three aircraft.

With respect to the aircraft nose #8316 incident, the Company contends that none of the three ramp agents involved in offloading the aircraft upon its arrival on September 23 were shown to linger at the threshold of the aft cargo bin door or were alone at that location. Therefore, none of those agents could have made three attempts to sever the wire without being observed by one of the others. The Union could identify no one who spent sufficient time near the cargo bin door sensor to sever the wires during the night. Rodenas testified that the missing portion of the video did show a TSA agent doing an inspection, but he did not open any bin doors. A maintenance employee did briefly open the aft cargo bin door while doing a nightly inspection, but he did not reach up to the sensor area. This evidence establishes that the sensor wires were intact as of the moment the Grievant arrived at approximately 5:30 AM on September 24.

The Company contends that the video evidence shows that the Grievant had three opportunities to sever the wire:

> 1) After opening the aft bin the Grievant appears with his head right by the door sensor. Commencing at 5:34:48, he stands at the threshold of the door, turned toward the sensor, with his arms up at the sensor level.
>
> 2) At 5:36:39 the Grievant arrives at the aft cargo bin door and raises his hands to the area where the sensor is located. He stops, backs away from moment, and looks up at the provisioning truck driver. Once the driver is inside the aircraft, the Grievant again approaches the aft cargo bin door threshold. At 5:36:46, he turns and faces the area where the sensor is located, his hands up at the level of the sensor. He remains there until Agent Z begins to approach at 5:37:16, and then he steps away.
>
> 3) At 5:43:50 the Grievant crawls into the aft cargo bin alone and remains there for almost 4 minutes.

This video evidence, as well as the Grievant and the Union's explanations for his behavior, show that the Grievant is the only person who could have cut the sensor wires on September 24. The Grievant was the sole agent at that gate who lingered in the sensor area without a clear work purpose for doing so. For the few minutes that Agent Z was at that bin on his own, he was loading bags, continuously, until the two other agents arrived. After Agent Z closed that door the only person to reopen it, until the sensor failure was discovered at 6:45 AM, was the Grievant, at

6:37:57. The damaged wire showed three attempts had been made to cut it.

The Company contends that the Grievant's explanations of his actions during each of these three opportunities was inadequate. Although he said he was checking the aft bin for leftover items and moving the bin webbing to do that, the video shows that his hands and arms were moving at the threshold of the door, not inside the aircraft. His arms remained mostly level with the sensor while moving, with his right elbow outside the door. During opportunity #3, the Grievant spent almost 4 minutes inside the bin by himself. His claim that he was putting up bin webbing was not credible. Webbing usually goes up after bags and freight are loaded, as Union witness Z conceded. The Grievant was evasive regarding how much work the clipping of webbing entailed. The video also contradicts his story because if he had placed bin webbing in the three areas of the bin, shadows would have appeared in the video.

The Company contends that the most damning part of the video is of opportunity #2, when the Grievant spent 30 seconds with his hands at the sensor. Before moving to access the wires the Grievant glanced at the provisioning agent above him and waited until that agent went inside the aircraft. The Company maintains this is the action of someone who is checking to see if his movements will be discovered. Tellingly, the Union completely omitted any explanation for this portion of the video, either from the Grievant or its two expert witnesses. On cross examination, the Grievant was evasive and provided no explanation for his movements. The Grievant asserted at the fact-finding that he was just acting as he normally did, but Westermajer watched video of him from the day before and found the Grievant did not spend extra time in the area of the bin door sensors.

Thus, the Company contends that the Grievant had three opportunities to sever the wire on September 24. The first two were short and unsuccessful, matching the evidence on the wire. The third try was successful and coincides with the moment that the Grievant spent an extended time inside the bin.

The Company further contends that the Grievant had the opportunity to pull out the wires on two aircraft on September 19. The Grievant was alone in the front bin of aircraft nose #236 from 7:57:29 until 8:00:17 a.m. He claims that he was resting in the bin. After aircraft nose #236 was towed to a maintenance pad, repaired, and towed back to a gate, it was discovered that the forward door sensor wire had been damaged. The Grievant was the only agent who had been alone in the bin and neither he, nor the Union representatives who watch the entire video at the fact-finding, suggested anyone else with the opportunity to commit this act. It is unlikely that this could have occurred while the plane was under the mechanics' control at the maintenance pad.

The Company notes that the TSA can fine Southwest if it finds that it does not have control of the aircraft overnight. Maintenance is in charge of such aircraft and takes this job very seriously. It is highly unlikely that the wires of aircraft nose #762 were damaged the night before because no problems were reported when it was towed from the remote pad to gate 10 the morning of September 19.

The Company contends that the Grievant was the only employee without a reason to be at the front cargo bin door of aircraft nose #762. An agent opened the door then walked away and no one else approached it until the Grievant did at 9:58:59. The Grievant did not explain why he approached the aircraft at that time. He looked left, then right as he approached the door, and then peered into the bin with his head even with the door sensor. He again looked right and left, before putting his right hand on the fuselage and looking right at where the sensor is located. Bracing with his right hand on the outside of the aircraft, he makes a quick movement with his left hand. As he walks away at 9:59:46, he has something in his hands, something he could not identify at the fact-finding or the hearing. The Company notes that the Grievant avoided the front bin when he saw another agent nearby, a few minutes later. When placing the stroller in the bin, the Grievant said he was connecting the bin webbing. Westermajer said it did not look like he was fixing bin webbing, and Union witness W conceded he could not see that, but just assumed that was what happened. Agent Y was in the bin on his own, for a brief period, but was placing bags.

The Company contends that it has proved the Grievant did sever the wires. Due to the protective plate covering the wires, they could not have been snagged by a bag or stroller, and been damaged unintentionally. There has been no history of this type of damage to any aircraft in the Company's records. The chance that this damage could occur inadvertently, in a space of days, in the same station, is tiny. The Grievant is the only person who had access to all three aircraft during the time the wires could have been severed. The statistical chance that the Grievant would have such incredibly bad luck to be working the exact gates, on the exact days, at the exact times as whomever else may have cut the wires is infinitesimal. There have been no similar instances since the Grievant was terminated. The only alternatives to the Grievant are a mechanic working on aircraft nose #236 at the remote pad, while repairing the IRS system; an overnight cleaner on aircraft nose #762; ramp Agent Y on aircraft nose #762 or ramp Agent Z on aircraft nose #8316. However, it had to be at least two of those employees, working in concert, because none had access to all three. Therefore, none of these employees are likely candidates.

As to the Union's criticism that the Company has failed to show a motive, there is some logic behind this act, and an agent is the most likely culprit. A mechanic would have little incentive to cut a wire he would need to repair moments later, but a ramp agent would obtain an unscheduled break. A cleaner or mechanic would not have that benefit. Skepticism is natural, but the credible evidence supports the Company. The Union merely casts aspersions and relies on far-fetched assumptions to defend the Grievant.

The Company rejects the Union's criticism of the fact-finding. Westermajer initially was skeptical that the Grievant was at fault and conducted an extensive investigation. The fact-finding was thorough and lasted quite a long time. Even if Westermajer did raise his voice, that does not mean the fact-finding was unfair. Other than vague suggestions, the Union did not offer specific proof as to how the investigation was fair under the just cause analysis. The Union did not assert what might have been discovered in an investigation that would have changed the outcome nor suggest who or what more could been examined. Further, the Union did not bring forward any agents who worked with the Grievant on the shifts in question who could have

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

The Union's Contentions

The Union contends that the Company witnesses cannot point to a single second of video and say that is where the Grievant cut or yanked a wire. They both testified that he is not seen doing any damage, and only said he had the opportunity. The Company has replaced their burden of proof with suspicion and opportunity, but those, alone, are not enough to terminate the Grievant's employment.

The Union contends that the Grievant had the opportunity because he was doing the job he was assigned. He is seen working his flights like any other ramp agent might do. A ramp agent who loads and unloads aircraft will spend a good amount of time around the bins. Union witnesses Z and W, with 22 and 17 years of ramp experience, respectively, testified that they did not see any suspicious behavior. They saw a ramp agent doing the same things they do every day. Z said that if he had seen anything that led him to believe the Grievant was responsible for the damage he would not have testified on his behalf. Their testimony, and 39 years of collective experience, ought to carry more weight than that of the Company witnesses, with only 14 months of combined time on the ramp.

The Union contends that the witness statements from Ramp Agents Y and Agent Z offered nothing to show that the Grievant was acting suspiciously at any time. Agent Z stated that he and the Grievant were shocked that someone would cut the wire.

The Union notes that these three incidents happened over a six-day time span. Before September 19, the Grievant never had problems with his work performance or mishaps involving equipment or aircraft. He was happy with his new job and looking forward to a promising career, and, with three kids and a wife, was happy to sacrifice for his family. The Company never offered a reason as to why he would want to do what they are alleging. The fact that there have not been more incidents since the Grievant was terminated merely proves that the person or persons involved were smart enough to stop and let the Company think they had gotten the right man.

The Union contends that the testimony of the Company's witnesses was biased. Both focused their suspicions solely on the Grievant from the beginning of the investigation. Westermajer offered to let the Grievant resign before even holding a fact-finding. That is highly irregular, shows his predisposition, and explains the hostile fact-finding. Westermajer's lack of objectivity caused him to concentrate only on the Grievant's actions, and to deem them suspicious. His testimony regarding the video of aircraft nose #8316 was later corrected after he was shown that the aircraft was approached at least six times during the overnight period. He was unaware that one person had opened the rear cargo bin door and did not look into their identity or check to see if they had the opportunity to approach the other aircraft in question. Rodenas recalled one mechanic doing a walk around, but not the five other times mechanics

The Union contends that the pad where aircraft are parked is an open space a few hundred yards beyond the gate area. It is not difficult to get to. Both ramp and maintenance employees use golf carts or tugs and drive all over. Rodenas conceded that if someone got in the cargo bins of a sealed aircraft, and the Company did not actually see them, they would never know what happened. The only video that mattered to the Company was when the Grievant was at work and they refused to consider or check anyone else who also had an opportunity.

The Union contends that the Company's investigation was not as thorough as it should have been because all three damaged aircraft were worked on by mechanics. The Company did not look into the possibility of a mechanic inflicting the damage. The Union requested video of all three aircraft, as they sat in Dallas, and the maintenance employees work schedules. The only video provided was five short clips and the Union never received the maintenance schedules. The Company also did not consider the possibility that more than one agent did these acts. Although the Company claims that it would only take seconds to do the damage, there are gaps in the video when multiple agents and mechanics were approaching and handling aircraft nose #236. A critically important fact is that the cargo bin door light was not on until that aircraft was towed back to the gate, after two hours when the Grievant did not have access to it. Aircraft nose #762 sat at the same maintenance pad for 12 hours. Further, it is troublesome that the parties do not know the identity of the ramp agents downloading aircraft nose #8361 the evening of September 23, or whether any of them worked the morning of September 19.

The Union contends that the Company's whole case is based on circumstantial evidence, evidence that is acceptable only when it leads to one logical or reasonable conclusion. In this case there are multiple logical and reasonable conclusions. The Union believes that no one workgroup is more likely to do this type of senseless and malicious damage than any other. If proven, any employee regardless of position, would be done in this industry and, without a doubt, face legal recourse.

For the above reasons, the Union asks that the grievance be awarded and that the Grievant be reinstated to his position, made whole in every way, and that his file be purged of all reference to this incident.

ISSUE

Did the Company have just cause to discharge the Grievant? If not, what shall the remedy be?

FINDINGS

The Grievant and the Union agreed that termination would be the appropriate penalty for an employee who cut wires on an aircraft, as alleged here. The Company has properly focused on the crux of this case, that is, whether the Grievant was the perpetrator. On that point, the Company bears the burden of proof. There were no eyewitnesses and the Company's

investigation involved reviewing video, examining the aircraft logbooks, daily work assignments for ramp employees, reviewing or obtaining SOPI reports, and obtaining written statements from some ramp employees.

The Union's argument that the Company's witnesses were biased is without foundation. The damage to these three aircraft occurred in cargo bins and, therefore, it was completely reasonable for the Company to compare schedules and identify which, if any, ramp employees were working during the shifts the damage was discovered. That examination surfaced only one ramp employee: the Grievant. Cleaners do not work in the cargo bins. Mechanics may work on all parts of the aircraft, but ramp employees are in and out of cargo bins, routinely, on each and every flight. The Company's decision to focus on the Grievant's actions, by viewing the video of the times he was working around those three aircraft was completely understandable, and proper.

As Westermajer acknowledged and as was clear from viewing the video at the arbitration hearing, it is not possible to see the Grievant actually pulling or cutting any of the wires. Also, there are no direct witnesses to this misconduct.

This is the type of case, where, of necessity, the employer must rely solely upon circumstantial evidence. Circumstantial evidence relies upon an inference to connect the evidence to a conclusion of fact. Here, the conclusion of fact the Company must establish is that the Grievant was the perpetrator. Circumstantial evidence may allow for more than one explanation. Therefore, in analyzing circumstantial evidence care must be taken to avoid false deductions and to exclude other inferences that could be drawn from the circumstantial evidence.

The strongest piece of circumstantial evidence offered by the Company concerns the opportunities the Grievant had to commit these acts. In its brief the Company carefully details those opportunities. As to the September 24 incident, the Grievant did have three separate opportunities to sever the wire. The damaged wire shows three attempts were made to cut it. On September 19, the Grievant had time, alone, in the front cargo bins of both aircraft nose #236 and aircraft nose #762.

The Grievant's presence in those locations can also be explained by the work he was required to do as a ramp agent. As to aircraft nose #236 on September 19, when the Grievant remained in the forward cargo bin for 2 ½ minutes, Westermajer said that some agents do sit in the bin and wait for uploading to start, rather than getting out of the bin to assist with other tasks. As to aircraft nose #762 on September 19, it is not out of the ordinary for a ramp agent to examine an empty bin, and remove something. Opening a bin to add a stroller is a completely normal task for a ramp agent. As to aircraft nose #8316 on September 24, as the gate lead the Grievant was responsible for preparing the 800-series aircraft for its originating flight. That included checking the cargo bins for anything that might be left from the previous flight, and making sure the bins were ready to load. Thus, other inferences could plausibly be drawn from the Grievant's observed conduct.

Another problem with the Company's case is the minimal effort taken to rule out the possibility that anyone else was involved. In particular, the Company did not explore any

possibility that mechanics could have caused this damage. Technical Operations Supervisor Rodenas testified that a mechanic would have used a tool that made a clean cut on aircraft nose #8316. While it is certainly true that mechanics have tools that could have made a clean cut, and that they have extensive knowledge of the aircraft and, hence, would know precisely where to cut, it is equally logical that if a mechanic were the perpetrator, that mechanic would know how to disguise the action by crudely cutting the wire. Rodenas also assumed that the possibility of losing a license with the FAA, and thus a career, would deter a mechanic. It is equally clear, however, that a ramp agent or any other employee of an airline would be terminated for such conduct. The fact that mechanics are licensed is not a sufficient basis to decline to explore the possibility that this damage was done by a mechanic.

The Union made a specific request for the schedules of mechanics to review who worked on these three aircraft. While the Company may be correct that it is highly unlikely that a mechanic was the perpetrator, an inference drawn from circumstantial evidence becomes more likely once alternative explanations have been ruled out. The information needed to rule out the possibility that a mechanic was the perpetrator was within the Company's control. Nevertheless, those schedules were not examined by the Company and were not provided to the Union. Rather, the Company ruled out this possibility on the basis of an assumption about how mechanics would have behaved.

In addition, the Union properly notes that the Company did not consider whether any ramp agents who were on duty on September 23, when aircraft nose #762 was unloaded and towed to the maintenance pad, were also working on September 19. That point is significant because the brake rider during that tow might not have noticed or reported that the cargo door warning light was on.

For the above reasons, the Company has not established just cause for terminating the Grievant's employment. Therefore, the grievance will be sustained. All references to the termination will be removed from the Grievant's file. He is to be reinstated with his seniority restored and made whole in all other respects. 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. All references to the termination will be removed from the Grievant's file. He will be reinstated with his seniority restored and made whole in all other respects. In accordance with Article Twenty, Section One, Paragraph C, the costs of the arbitration shall be borne by the Company.

Elizabeth Neumeier, Arbitrator

July 11, 2016