

BEFORE
WILLIAM H. LEMONS
IMPARTIAL ARBITRATOR

In the Matter of Arbitration between)
Southwest Airlines Company)
Dallas, Texas)
And)
Transport Workers Union of America,)
AFL – CIO Local 555,)
Representing Ramp, Operations,)
Provisioning and Freight Agent Employees)

[REDACTED]

[REDACTED]

Overtime Bypass Grievance

OPINION AND AWARD OF THE ARBITRATOR

October 21, 2010

ARBITRATION AWARD

By the terms of the Collective Bargaining Agreement (“CBA”) between Southwest Airlines, Co. (hereinafter referred to as the “Company”) and the Transport Workers Union of America, AFL-CIO Local 555 (hereinafter referred to as the “Union”), William H. Lemons of San Antonio, Texas was selected by the parties to serve as Impartial Arbitrator, as per the parties’ July 14, 2010 letter to him. A hearing was held in a mutually-acceptable conference room at the Wyndham Dallas Love Field on September 10, 2010. The parties were afforded full opportunity for the introduction of evidence, examination and cross-examination of witnesses, and oral arguments. The Union tendered three exhibits into evidence. Additionally, the parties introduced four joint exhibits, including the grievance package (Jt. Ex. 3). The evidentiary portion of this matter was declared closed as of September 10, 2010. Post-hearing briefs were submitted in a timely manner and received on October 7, 2010.

APPEARANCES:

FOR THE COMPANY:

Kerrie V. Forbes
Senior Attorney

FOR THE UNION:

Albert Barbosa, District VIII
Representative, TWU Local 555

IMPARTIAL ARBITRATOR:

William H. Lemons
4040 Broadway, Suite 616
San Antonio, Texas 78209

ISSUE: Did the Company violate the CBA on April 4, 2010 in the way it assigned known overtime with respect to the Grievant, [REDACTED]? If so, what is the appropriate remedy?

TIME FRAME ISSUES: There were no timeliness/time frame issues, so reference is made to the grievance package (Jt. Ex. 3) for applicable dates, the same being incorporated herein by reference as though fully set forth *verbatim*. The parties stipulated that this grievance was properly before me for final and binding decision. The parties also stipulated that the Company's documentation could be received into evidence without the need for formal authentication or foundation, unless a particular document was the subject of a specific objection.

PROVISIONS OF THE LABOR AGREEMENT: (Jt. Ex. 1)

Article 2 – Scope of Agreement

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

Article 7 – Overtime

- C. **Double-time.** Employees shall be paid an hourly rate of double time for:
1. **Excess of 8 Hours Overtime.** All hours in excess of the first eight (8) hours worked on one of the two regularly scheduled days off each work week.
 3. **Excess of 12 Hours.** For all time worked in excess of twelve (12) hours in any work day.
- H. **Splitting Assignments.** The Company may cover less than a full shift of available overtime, but if a block of four (4) or more consecutive hours is to be covered, the block shall not be split for assignments unless no one is eligible and available in the call book.
- I. **Overtime Call Book.** If a known overtime assignment of four (4) hours or more is available, the overtime call book for each bid location shall be utilized. In accordance with Appendix A, to be eligible for this overtime, an Employee must complete and sign the overtime call book in ink, and must initial, in ink, any subsequent deletion or changes. All such changes must be witnessed and initialed by a supervisor. A standard overtime call book shall be used at all stations and offices. Overtime call books shall be posted for a minimum of fourteen (14) days in advance. When an Employee signs the overtime call book, it shall constitute his

agreement to work on the day for which he signed, and normal attendance rules shall apply.

2. **Assignment Order.** Assignments from the overtime call book shall be assigned to qualified Employees in the following order:
 - a. By scheduling of the senior Employee of that bid location who is on his first day of rest, or who is on his second day of rest and has not worked four (4) or more hours of overtime on his first day of rest. If no such Employee is available, then:
 - b. By scheduling of the next senior Employee of that bid location who is on his regular workday and is at work, or has left work. If no such Employee is available, then:
 - c. By scheduling of the senior Employee of that bid location who is on his second day of rest and who has worked four (4) or more hours of overtime on his first day of rest. If no such Employee is available, then:
3. **Complete Utilization of Call Book.** An Employee who has worked an overtime assignment of four (4) hours or more in his overtime day has fulfilled his obligation to work voluntary overtime for that day, but shall be eligible for further overtime assignments after all other Employees above the close out line in the overtime call book have been utilized.
4. **Closing/Notification.** The overtime call book for the following day shall be closed at 1200 hours of the preceding day or sooner when the station or office closes prior to 1200 hours. The Company shall attempt to assign known overtime assignments within two (2) hours after the overtime call book is closed.
5. **Assignment/Preference.** When completing and signing the overtime call book, Employees shall indicate their preference for either an A.M. or P.M. overtime assignment, or both. Employees who indicate a preference for an A.M. overtime assignment in the overtime call book shall not be called for voluntary overtime assignments beginning at or after 12:00 noon on that date. Employees indicating a preference for P.M. overtime assignments in the overtime call book shall not be called for voluntary overtime assignments beginning before 12:00 noon on that date. . . .
6. **Mandatory Assignments.** The Company and the Union agree that mandatory overtime assignments are not in the best interests of either party. To maximize voluntary overtime utilization, the Company must make overtime known to the Employees, and Employees must utilize the

overtime call book to the fullest. If a sufficient amount of overtime is not voluntarily obtained or if no one signed the overtime call book, the Company shall require Employees to work the overtime. It shall only be assigned as outlined in Article 7.I.2 a., b., and c. in reverse order of seniority.

OTHER PERTINENT INFORMATION

TWU Work Rules Interpretations (Jt. Ex. 2)

10. How is the Overtime Callbook properly closed out? (Par. I)

At 12:00 noon, a red line should be drawn diagonally from just below the last name to the bottom right hand corner of the page. Closing Supervisor writes in initials, time, and date. A witness initials the top of the page and the bottom "closed" line. "Closed" means no Employee can add his name to the Callbook, unless he signs below the line. Overtime assignments do not have to be made at 12:00 noon, however; the Company will make every attempt to assign known overtime for the following day within the designated two hour time period following the closing of the Overtime Callbook.

Employees can be assigned unknown overtime (as needs arise) anytime after the close out and throughout the following day. An Employee may be allowed to remove his name from the overtime book after all known overtime has been assigned, prior to receiving an assignment, by drawing a line through his name and having it initialed by a Supervisor.

15. Can known overtime be assigned prior to the day before as outlined in the contract? (Par. I)

No. A list of anticipated overtime can be posted, seeking volunteers, but overtime cannot be assigned except as outlined in the contract. (The only exception will be the holiday overtime.)

18. When an Employee indicates more than one preference for overtime, is he required to work more than one of his overtime preferences? (Par. I, 3)

No. An Employee who indicates more than one preference in the call book and has worked one assignment can (but won't be required to) work a second assignment that day after the call book has been completely utilized (all Employees signed above the close out line). (The only exception is a continuous with assignment.)

36. **If two Employees are in the Overtime Callback [sic], should adjustments on overtime be made to accommodate the most senior Employee even if overlap occurs? (Par. I)**

No. The overtime assignment needed should be determined prior to looking at what individuals are available. The very least amount of overtime possible should be arranged.

51. **When Employees are assigned overtime, including extensions, should they be given a start and end time?**

Yes, a start and end time must be given at the time of the assignment.

STATEMENT OF FACTS

The Grievant, [REDACTED], is a long-term Southwest Operations Agent in [REDACTED]. On April 4, 2010, she was assigned to work an A.M. voluntary overtime assignment for the following day. In addition to this assignment, which was her first choice, she also volunteered to work a P.M. assignment. A number of other [REDACTED] Operations Agents volunteered for overtime assignments that day as well, including [REDACTED], who volunteered for a P.M. assignment. (See Jt. Ex. 4.)

Before the Overtime Call Book was closed, the Company followed its practice to “make overtime known to the Employees” by listing the “anticipated overtime” needs for the day at the bottom of the Overtime Call Book (Jt. Ex. 4). It is the Company’s position that it did not determine, and could not have determined, its actual “known overtime” needs or assign start and end times for overtime assignments until after the Overtime Call Book was closed. The Union contends that there is “*known* overtime” (due to absences known or scheduled ahead of time) and “*unknown* overtime (from situations not known or foreseeable ahead of time), and through the ingenious argument of Mr. Barbosa, says that what was listed at the bottom of Joint Exhibit 4 was,

or should have been, the overtime which it made known to the employees, and thus that the Company is bound to assign those precise hours.

Jeremy Vann was the Ground Operations Supervisor who closed the Overtime Call Book on April 4. He testified that he closed the Call Book at noon and determined and assigned [what the Company maintains is now] the known overtime for following day as of that time. After giving the Grievant the first overtime assignment – her first choice of a voluntary A.M. assignment – Vann then proceeded to complete the remaining overtime assignments for the day by assessing the Company's overtime needs and making assignments based on the contractual order of assignment set forth in the CBA. Vann then notified the employees of the start and end times for their voluntary overtime assignments when they were assigned.

What lead to this grievance? While the Company's posted [it says anticipated] overtime needs were from 1330 to 2100, after closing the Call Book, Vann determined that the amount of known overtime actually needed to meet the Company's operational needs was not as great as had been anticipated prior to closing the Call Book. Accordingly, he assigned "the very least amount of overtime possible" to cover the operational needs. By doing that, and as a result, he utilized all of the employees in the Call Book before assigning anyone a second voluntary overtime assignment.

In summary, because Mr. Vann's view of the operational needs only justified an overtime assignment from 1530 to 2100, he assigned the P.M. assignment to the next employee in order and available in the Call Book - [REDACTED]. Thus, Grievant was not assigned a second voluntary overtime assignment that day. Having made this adjustment, the Company contends that under Work Rules Interpretation Art. 7, 36, it would clearly have been improper for the Company to have

assigned more overtime than needed to the Grievant in order to give the voluntary P.M. overtime assignment to her rather than to [REDACTED].

The unrefuted evidence is that, in addition to [REDACTED], several other DEN Operations Agents were given overtime assignments that day that were shorter than the anticipated needs posted prior to the closing of the Call Book. (See Jt. Ex. 4.) [REDACTED] was given an A.M. voluntary assignment from 0530 to 1330 when the posted anticipated needs were from 0500 to 1330. Likewise, [REDACTED] was given an A.M. assignment from 0600 to 1330 when the posted anticipated needs were from 0600 to 1430. But other than the Grievance at issue, no other grievances were filed in [REDACTED] relating to the overtime assignments for the day in question. In fact, the [REDACTED] Station posted its anticipated overtime needs prior to closing the Call Book and assigned known overtime after closing the Call Book in the same manner for at least a year prior to the day in question, and there is no evidence of any other grievance ever being filed in [REDACTED] regarding this issue. The unrefuted evidence, and testimony of both Union and Company witnesses, is that the overtime figures [amounts, durations, projections, anticipations, etc.] shown at the bottom of Joint Exhibit 4, are subject to change even up to the moment the Call Book is closed – due to unknown circumstances and the fluid nature of the air transportation business – known or unknown.

OPINION OF THE ARBITRATOR

Both parties were well represented in this dispute and presented persuasive arguments. Mr. Barbosa did a fine job in his first case, and his argument is very clever and plausible. The parties' excellent briefs were most helpful to my making a decision in this instant case. As I have stated before, it is a pleasure to hear a case where capable representatives present a good case using credible witnesses – witnesses who tell the truth. It says a lot about the culture of the Company and

the Employees, and speaks highly of the professional relationship between the Company and TWU Local 555.

Based upon all the facts and evidence before me, and after my review of the applicable provisions of the CBA and WRI, it is my conclusion that the Company properly assigned [REDACTED], rather than the Grievant, the voluntary overtime assignment in question, and in so doing a) covered its operational needs with the least amount of overtime possible and 2) completely utilized the available employees who volunteered for overtime in the Overtime Call Book. In support of this conclusion, I make the following specific findings:

a) The Company posted “*a list of anticipated overtime*” several days prior to closing the Overtime Call Book. It listed the anticipated overtime needs [whether known, unknown or merely anticipated] at the bottom of the Overtime Call Book, as was the regular practice in [REDACTED]. This appears to comport with Work Rules Interp., Art. 7, 15.). In doing this, the Company made its *anticipated overtime needs known* to the employees to facilitate the use of voluntary overtime rather than mandatory assignment. Remember, the unanimous testimony was that the overtime needs – the notations on the bottom of Joint Exhibit 4 – could and often did change up to the time of closing of the Overtime Call Book. It is for that reason that there apparently now appears in [REDACTED] a *caveat* shown at the bottom of the Overtime Call Book pages stressing that the projected overtime needs are only the *anticipated needs*.

b) The Company determined and assigned the “*known overtime*” *after* the Overtime Call Book was closed, having first assessed the Company’s actual overtime needs as of that time and deeming that assessment *known overtime*. It then could make actual assignments following the contractual order of assignment, in accordance with CBA, Art. 7.I.2. and 7.I.4 and Work Rules Interp., Art. 7, 15.

c) Rather, as it is empowered to do, the Company assigned “*the very least amount of overtime possible*” to cover the operational needs. (Work Rules Interp., Art. 7, 36.) In doing so, the Company covered “*less than a full shift of available overtime,*” as permitted by the CBA. (CBA, Art. 7.H.) Because the operational needs only required actual overtime coverage from 1530 to 2100, the Company only assigned the overtime necessary to cover this period. I can find nothing in the CBA or the WRI that binds the Company to its original notation of 330–2100. The Grievant testified during the hearing that she has no reason to believe the [REDACTED] Station was understaffed on the day in question.

d) After assigning the Grievant her first choice of an A.M. voluntary overtime assignment, she was not assigned a second voluntary overtime assignment because Westling, another Employee in the Call Book, was next in the order of assignment, available to cover the Company's operational needs, and had not yet been utilized that day. (CBA, Art. 7.I.3.; Jt. Ex. 4.) I find no evidence that the assessment of the overtime need was manipulated or "adjusted" in order to favor one employee over another.

e) The Company gave start and end times for the voluntary overtime assignments "*at the time of the assignment*," after the closing of the Overtime Call Book. (Work Rules Interp., Art. 7, 51.) The Grievant, [REDACTED], and the other [REDACTED] Employees who were assigned voluntary overtime that day were notified of the start and end times for their assignments in the "O.T. Assignment" column of the Call Book. (Jt. Ex. 4.). I cannot escape the conclusion that for purposes of assignment, that universe of information was then the *known overtime*.

f) It is fundamental that in "make whole" awards, monetary damages should correspond to specific monetary losses suffered as a result of the contract breach. *How Arbitration Works, Elkouri & Elkouri*, ch. 18, p. 1201 (6th Edition, 2003). Often, in alleged overtime bypass cases, the remedy is that the employer "restore equality of distribution within a reasonable time." Yet, where warranted, this Arbitrator has ordered "make whole" relief. In this particular situation, virtually every employee that wanted voluntary overtime had it assigned. I can but imagine that if the original notation at the bottom of Joint Exhibit 4 had been "1530 – 2100, and was abruptly changed to 1330-2100 when the Call Book was closed (thus making [REDACTED] ineligible), would he have grieved the assignment to [REDACTED]. [REDACTED] on the same theory?

AWARD

After careful consideration of all the oral and written arguments and evidence, and for the preceding reasons, the Arbitrator finds that the Company did not violate the CBA on April 4, 2010 in the way it assigned known overtime with respect to the Grievant, [REDACTED], and thus the grievance should be and is denied. Any unresolved differences regarding interpretation or application of this Award will be settled by the undersigned upon written request of the parties. The cost of the arbitration shall be borne by the Union.

Signed this 21st day of October, 2010, at San Antonio, Texas.

William H. Lemons
WILLIAM H. LEMONS, Arbitrator
