

IN THE MATTER OF ARBITRATION )  
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SOUTHWEST AIRLINES CO. )  
)  
)  
and )  
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)  
TRANSPORT WORKERS UNION OF )  
AMERICA, AFL-CIO, LOCAL 555 )

Case DEN-R-1346/12

Christina Bennett, Esq., for the Employer  
Mike Roach, for the Union  
Before Matthew M. Franckiewicz, Arbitrator

### **OPINION AND AWARD**

This arbitration proceeding involves the discharge of Grievant [REDACTED].

A hearing was held on November 7, and December 14, 2012, at Dallas Texas. Both parties called, examined and cross examined witnesses, and offered documentary evidence. Both parties filed briefs. The record closed with the receipt of briefs on January 29, 2013.

### **Contract Provisions Involved**

#### 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 are 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.

#### ARTICLE FOUR DEFINITIONS

D. A “work shift”, except as otherwise provided herein, shall consist of eight (8) hours, exclusive of meal periods.

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.

B. Representation Requirements. The Union and the Company shall be represented at each location. These representatives shall be empowered to settle all local grievances without setting precedent of any kind. The Local Representatives for the Union shall be selected from members of the Union who qualify under Article Two. The Local Representative for the Company shall be the Manager or his designee. Neither party shall be represented by legal counsel through and including the System Board. Legal representation shall be permitted in the case of Arbitration.

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

G. Fact-Finding Procedures. No covered Employee shall be subject to discipline involving loss of pay or discharge without first having the benefit of a factfinding, with the right to have a Union representative present, in accordance with the following procedures.

\* \* \*

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 a 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.

## The Facts

Grievant [REDACTED] was a Ramp Agent at Denver, with a little less than two years service at the time of his discharge. Apparently turnover at Denver is high, and an employee with two years service is among the more senior employees. Denver is a large, spread out airport. Most of Southwest's gates are on Concourse C, with a few in Concourse A.

Prior to his discharge, [REDACTED] had not been issued any discipline.

He was terminated by memorandum dated July 16, 2012. The memorandum states:

A fact-finding meeting was held on July 11, 2012 to discuss your whereabouts on the morning of July 8, 2012 from 0500 to 07:15. Present at this meeting were you, TWU Union Representatives [REDACTED], [REDACTED] and [REDACTED], Ramp supervisor Kris King and myself.

After a thorough and complete investigation into this matter, and after considering the evidence and testimony presented at the fact-finding, it has been determined that you were not in your assigned work area and were paid for time in which you were not available for your work assignment. 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 in order 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.
13. Act of theft or dishonesty, including knowingly presenting to the company falsified documents.
14. Performing your job in a careless, negligent, or unsatisfactory manner.
40. Time theft will result in termination.

Based on the above and because of your actions, your employment with Southwest Airlines is terminated effective immediately.

The discharge memorandum quotes portions of the Basic Principles of Conduct (revised December 15, 2009) from the Ground Operations Employee Handbook. The Basic Principles of Conduct includes the following introductory paragraph:

Each Employee is expected to be familiar with and adhere to all Company policies and procedures. Any violation of the following will be grounds for disciplinary action. Discipline may range from a reprimand to discharge, depending on the particular violation and the circumstances. The following list is meant to be representative only, and in no way is it intended to be a complete list of all violations of our Basic Principles of Conduct.

On Sunday July 8, 2012, Grievant [REDACTED] was scheduled to work from 5:00 a.m. to 1:30 p.m. He punched in on time at 4:54 a.m.

The schedule for Ramp Agents changes frequently. The schedule that was printed at 4:40 a.m. on July 8 and posted shortly before 5:00 a.m. had the assignment "SEE COORD." (See Coordinator) for [REDACTED]. Of the dozens of employees scheduled that morning, [REDACTED] was the only one scheduled as See Coordinator. He was also listed on the schedule as "VOT" (Voluntary Overtime) but this was inaccurate; he was not on overtime. [REDACTED] had been scheduled as See Coordinator at least four other times in the two months prior to July 8.

The schedule is posted in a glass window in Concourse C, near the C Concourse time clock. Copies are kept in the Ramp Supervisor Coordinator's office and the Administrative office.

The "See Coordinator" assignment is essentially a fill-in position (described by some witnesses as a bull pen position), to work in an area determined by exigencies such as missing employees, flight changes, or heavy workloads in particular areas.

The Ramp Supervisor Coordinator that morning was Nada Pugliese. According to Pugliese, on most days someone is scheduled as See Coordinator. The Coordinator herself does not prepare the schedule – it is computer generated by Administrative Supervisors.

Pugliese herself clocked in at 4:52 a.m. on July 8, outside the Administrative Office. From the clock, she normally takes the schedule and walks to her office, only about 30 seconds away from the time clock. She noticed that [REDACTED] was listed as See Coordinator, and intended to assign him to work for Zone Supervisor Tim May. An employee in May's area who was scheduled to begin work at 6:45 had called in sick. Pugliese did not designate a specific gate for [REDACTED] to work – May would make that decision based on the operational need in his area.

Pugliese stated that her first hour, before the first flight departs, is generally a busy time, and she is normally in her office then, but if she leaves for the restroom (only a few steps away), someone else is always there. Coffee is also only around 10 steps outside her office. On that particular morning, she stated that Laura Graybill was in the office for a while, and two other Supervisors were also in the office.

Pugliese's routine is to first clean her desk, and then print a flight schedule and list of originating flights. In the morning she issues radios to some Ramp Agents, and keeps a log showing who received a radio and when. Because agents leave their badges when they are given radios, someone needs to be in the office to secure the badges. She also waits for Ramp Agents scheduled as Hot Bag or See Coordinator to see her. She acknowledged, however, that it was possible she left the office on the early morning of July 8.

When Pugliese had not seen [REDACTED] by 5:15, she checked the Kronos system to determine whether he had punched in, and determined that he had punched in at 4:54. She then made an "All Ramp Page" for [REDACTED] to contact the Coordinator or call her extension. An All Ramp Page is broadcast to all radios, break rooms, restrooms and speakers on the ramps at A and C Concourses, and at T Point. (Radios are issued daily, but [REDACTED] did not have a radio on July 8.)

At some point, which she estimates as between 5:15 and 5:30, She contacted A Concourse Supervisor Ryan Davis, who said that he had not seen [REDACTED].

At 5:30 Pugliese called Administrative Supervisor Dan Carson to check whether [REDACTED] had left. Carson said he had not seen [REDACTED], but that he had checked Kronos and [REDACTED] had clocked in at 4:54. About 5:35, Pugliese phoned Ramp Supervisors Tim May and Laura Graybill, both of whom told her they had not seen [REDACTED].

At 5:40 Pugliese made a second All Page for [REDACTED] with the same message as the first All Page. Again, she received no response. Five minutes later she told manager, Ramp and Operations Roger Hancock that she had not been able to locate [REDACTED]. Around the same time she called T-Point but Ramp Supervisor Steve Debates said he also had not seen [REDACTED].

At 5:50 she made another All Page, but again did not hear from [REDACTED].

At 6:45, pursuant to instructions from Hancock, Pugliese issued a fourth All Page for [REDACTED], but still received no response.

At 7:14, she learned from Hancock that [REDACTED] had been located at Gate C35. Pugliese never did see [REDACTED] that morning.

Between 5:00 a.m. and 7:14 Pugliese's radio log indicates that radios were checked out at 5:00 (2), 5:57, 6:03, 6:09, 6:13, 6:14, 6:17, 6:24, 6:28, 6:29 (2), 6:54, 6:56, 6:58 (2), 7:03 (2), and 7:05.

Ramp Supervisor Laura Graybill stopped into Pugliese's office sometime between 5:00 and 5:15, and Pugliese mentioned that she had not seen [REDACTED]. She stated that she went in around 5:00 to get a radio, but her name is not on the radio sign out log. No other Managers' names are on the log, and I gather that only employees sign out for the radios.

Graybill checked Operations and the C-43 area to look for [REDACTED] but did not see him. Around 5:35 she went back in and told Pugliese this. Graybill heard Pugliese's second page around 5:40. Graybill later did a sweep from Operations to Ramp Administration, to a walkway under the Concourse, to Gate C-45 and the C-43 Ready Room, but did not see [REDACTED]. Around 5:50 Graybill heard the third page. She did a sweep of her area (Zone 1), checking the area and break room but did not see [REDACTED]. Around 6:45 she heard another page for [REDACTED] and did another walk around, without success.

Ryan Davis was Ramp Supervisor on July 8 at Concourse A, where Southwest has two gates. He heard the page for [REDACTED] at around 5:15 and checked both gates, only one of which was active, but did not see [REDACTED]. He heard later pages around 5:40 and 5:50 and checked again, with the same result. At 5:50 he also did a quick check of the passenger area in Concourse A and the bathroom but did not spot [REDACTED]. He heard another page around 6:45, and did another check but still did not see [REDACTED].

Ramp Supervisor Tim May testified that on July 8 he was in Zone 2, Gates C-29 to C-35, but the schedule seems to indicate that May's area included Gates C-43 to C-49. He heard a page for [REDACTED] at around 5:15 and looked in the ready rooms and break rooms between around 5:30 and 5:50 but did not see [REDACTED]. He asked a few employees in a break room if they had seen [REDACTED] but none had. May went to Ramp Operations and obtained the phone number to contact [REDACTED]. May did not know whether this was a residential or a cell phone number. He phoned the number and left a message around 6:30 but did not receive a call back. He did not look for [REDACTED] again, but saw him around 7:15 on the jetway coming to the ramp area from C-35 carrying a red cup of coffee.

May asked where ██████ had been and whether he was aware he had been paged, and ██████ told him he was close by the C-35 - C-43 area on the ramp. May asked if he had reported to the Ramp Coordinator. ██████ replied that he had been there but the Coordinator was not there. May asked when and ██████ said shortly after 5:00. May told ██████ that his assignment was C-35 assist, where the first inbound in May's area had arrived around 10 minutes earlier. May had two originators before this incoming flight, one at C-41, where he recalls that ██████ was working.

According to May, ██████'s absence on July 8 was not typical of him. He characterized ██████ as a better than average worker, but stated that ██████ had problems earlier when he was not at his work area. May discussed this with ██████, and according to May, ██████ made fine progress correcting these issues.

Manager Ramp and Operations Roger Hancock normally arrives around 5:00 a.m. He later checked Kronos and determined that on July 8 he swiped in at 5:08. He estimated that he saw ██████ within two or three minutes at the glass case outside the Ramp Supervisors' office (not the same place as Pugliese's office), where the schedule is posted, looking at the schedule with his finger on the glass as if searching for his name. The schedule posted was the one printed at 4:40 a.m. Hancock greeted ██████ and went on to his office. He went on to the Operations Center and then around 5:20 to C-41 where the first originator was to depart. ██████ and ██████ were working the gate. Some bags were late arriving and Hancock asked Lynn if he needed any help. Lynn said yes and Hancock called Pugliese. Pugliese mentioned that she had not seen ██████. Hancock recalled hearing a page for ██████ and told Pugliese to page him again and call other Supervisors. Around 6:45 Hancock heard another page for ██████. He talked to Pugliese again and she told him that no Supervisors had reported seeing ██████. Around 7:15, May texted Hancock that he had found ██████.

At an operational briefing at 9:15 Hancock confirmed that no Supervisor had seen ██████ before 7:15 and asked all to write statements reflecting any efforts to find him.<sup>1</sup>

\* \* \*

████████ testified that he had worked on Saturday July 7 and checked the schedule before he left. The schedule posted at that time showed him as 51 Local Driver on A Concourse. The schedule printed at 12:05 p.m. on July 7 confirms that ██████ was listed as 51 Local Driver for the A Gates.

When ██████ arrived on Sunday July 8, because he expected to be working the A Concourse, he clocked in at the ticket counter in the main terminal. Coworker ██████ recalls riding the shuttle bus with ██████ that morning, and that ██████ headed toward the ticket counter while ██████ went off to punch in elsewhere.

In addition to the ticket counter there are time clocks in the C Gate and Administrative Office area, and the Cargo area.

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<sup>1</sup> The statements were offered as Employer Exhibit 10. I received them into evidence, but as to statements by individuals who did not testify, only for the purpose of documenting the Employer investigation and not as evidence of the truth of the contents of the statements.

His clock in time was 4:54 a.m. After clocking in he took an elevator from the ticket counter area to T Point, and then drove a tug from T Point to the A Gates. When he arrived, co-worker ██████ told him he was not scheduled at the A Gates. On cross examination he stated that this conversation took place before 5:23. ██████ took the tug back to T Point and checked the schedule there. He saw that his assignment had been changed to See Coordinator, the only employee listed as See Coordinator. He drove a tug to the C Concourse and went to the office but Nada Pugliese was not there when he arrived. ██████ did not wait for Pugliese to return, but assumed that he would be assigned to Zone 2, which had always been the case previously when he was designated as See Coordinator.

Instead of waiting for Pugliese, ██████ went to his locker and got his knee pads and gloves. He explained that when he goes to work, he goes to work and not to sit around. He checked the originator list and noticed that he was not assigned to an originator flight. He acknowledged that he had seen Roger Hancock, but according to ██████ this occurred as he was leaving his locker rather than at the very start of his shift.

He went to Gate C-41, where the first flight was scheduled to depart at 6:00 a.m. He offered to help there but ██████ waved him off. The swipe records indicate that ██████ went up the stairs at 5:23, and he stated that this was after he had been back and forth to the A Gates and to C-41.

██████ went back downstairs for a few minutes and then took an escalator back up. Based on the swipe records, he believes he took an escalator up to the Concourse at 6:33. He got a cup of coffee and eventually went to Gate C-35. He went there because this was where the first inbound would arrive in Zone 2, which he assumed would be his zone, since previously when he had been scheduled as See Coordinator, he was always assigned to Zone 2. When he got to the gate a plane was pulling in. He walked through the door by the jet bridge to the gate, where there were two strollers to be taken off the plane. ██████ handed him the strollers and he took them and his coffee in. As he returned with his coffee, around 7:15, Tim May saw him and asked where the fuck have you been, we've been looking for you for two and a quarter hours. (May denied cursing.) ██████ replied "I was here, clocked in on time and I was here." May told him to assist on Gate C-37. An originator leaves C-37 at 7:40 or 7:45. (As noted above, May recalled that he sent ██████ to C-35 rather than C-37.)

An earlier plane was scheduled to arrive at 6:25 but ██████ did not attempt to help unload it since it was not in Zone 2, where he assumed he would be assigned.

██████ worked at C-37 until around 11:00 when he was suspended and escorted out. A schedule printed at 1:02 p.m. on July 8 lists ██████ as Zone Assist in Zone 2. An employee (Hudson) who had been scheduled to work at C-37 called off sick that day. See Employer Exhibit 1.

██████ stated that he did not hear any pages for himself on July 8, probably because he was on the Concourse where pages are not audible.

██████ stated that this was the first occasion when he worked in an area he had not been assigned to, and the first time he had decided on his own where to work. He acknowledged that between about 5:15 and 7:15 he did no real work, but stated that there was no work for him to do since he was not on an originator.

██████████ was scheduled to work from 5:00 to 1:30 on July 8. He testified that he attempted to get a radio from Nada Pugliese near the beginning of his shift, but she was not in her office then. He estimated that this was between 5:00 and 5:10, about 10 or 15 minutes after he got to the Concourse. ██████████ signed out a radio at 7:03. Later that morning he saw ██████████ at his gate, C-41. ██████████ asked if he needed help, but ██████████ waved him off because there were already three agents at the gate. He estimated that this was between around 5:15 and 5:20 a.m. for a 6:00 a.m. originator. ██████████ spoke with Roger Hancock at the gate after 5:30 but Hancock did not ask about ██████████, and ██████████ did not indicate that he needed help.

He characterized ██████████ as a very good employee who went above and beyond in helping fellow employees.

██████████ testified that she saw ██████████ at C-41 around 5:30, and there were already three agents at the gate and so ██████████ waved off ██████████. She did not hear pages for ██████████ that morning. Pages are not audible in the terminal or the mezzanine, and not at certain gates.

She depicted ██████████ as an excellent employee, always helping when he was in the zone, and a great asset. She stated that she wished there were more like him.

██████████ started at 6:30 on July 8 at C-35. He does not recall who his partner at the gate was. His first flight was a 7:00 inbound. The schedule (Union Exhibit 1; see also transcript pages 319-20) is not entirely clear, but it appears to indicate that this inbound flight was 839, due at C-35 at 7:05. ██████████ came by at around that time, and took two strollers up to the jetway for passengers. Tim May came by after ██████████ had seen ██████████. ██████████ was not certain that these events occurred on July 8, but noted that he does not often work with ██████████.

██████████ stated that he worked with ██████████ a few times and it was a very good experience, ██████████ was there when he was supposed to be, and always helped when he was on a sister gate. He described ██████████ as a great worker and said that if there were more like him, the Company would not need 400 agents.

██████████ worked at A-51 on July 8. He did not recall whether or not he saw ██████████ on July 8, but he often works with ██████████. ██████████ punched in at the ticket counter at 4:45 a.m. His swipes indicate that on July 8 he was at the security checkpoint in the main terminal at 4:51, in C Concourse at 5:00 and 5:03. At 5:12 he was at A Concourse near Gate A-53. His next swipe was at the same location at 7:54.

He pictured ██████████ as one of a handful of agents who go above and beyond the call of duty.

██████████ testified that at the time (although this later changed) employees who were not on the originator list would “hang out,” go to the break room, or up to the passenger terminal or mezzanine to have coffee. If the person had no flight until 7:30, the employee would often go to get breakfast.

According to ██████████, when there is down time between flights, it is common practice for employees to go and get breakfast in the terminal, and they might spend an hour or an hour and a half doing so. He also stated that for employees who were not on the originator list (those assigned to work the first flight of the day at a gate) a few would help others with originator flights, but most would just disappear and not show up until time for their first inbound flight.

██████████ started that it was common for employees to go up to the terminal, to get coffee or visit McDonald's as long as they did not have a plane on the ground, and that they would often sit over their zones where they could see if a plane was coming, because the terminal is air conditioned.

██████████ stated that it was common for employees to wait for their first inbound in the terminal, that they would get breakfast or coffee

\* \* \*

Hancock scheduled a fact finding to investigate ██████████'s July 8 conduct. He also checked ██████████'s file, finding no prior discipline, and that ██████████ had signed an acknowledgment for the Basic Principles. He also confirmed that ██████████ had received a January 2, 2012 memorandum, which states in part:

This memo is intended to serve two purposes. First and foremost is to inform Employees that the contractual meal and rest periods [30 and 15 minutes respectively] will be enforced. Secondly, is to advise all Employees that meal and rest periods – or any period of time that you are away from your assigned area of responsibility – will need to be coordinated with your Supervisor. Failure to abide by the contractual guidelines and/or coordinate with your Supervisor may lead to discipline up to and including termination.

At the fact finding, Hancock asked ██████████ to explain his whereabouts on July 8. According to Hancock, ██████████ said he had punched in at the ticket counter at 4:54, and then went to T Point (which is located directly below the ticket counter). ██████████ said that he checked the schedule on Saturday and it had him assigned to A Concourse, and so he thought he was assigned to A Concourse, and he caught a ride there. When he got to A Concourse, he learned from ██████████ that he was not assigned there, and rode back to T Point and looked for the schedule. He saw that he was not supposed to be at T Point either, and went to C Concourse because he was to See Coordinator. He went to see Pugliese but did not find her, and without waiting for Pugliese went to the ramp to look for someone to help. ██████████ told Hancock that he went to Gate C-41, saw ██████████ and asked if he needed any help but ██████████ waved him off. Then he went to C-35 and C-37 to try to help. (Hancock thought this odd because no planes were scheduled at those gates then.) Hancock asked whom he had seen, and ██████████ said ██████████, ██████████ and ██████████. Hancock asked if ██████████ had seen him at the case by the ramp supervisors' office around 5:10, and ██████████ replied yes, but it was more like 5:30.

Hancock stated that ██████████'s account began to change:

it changed from originally going from the T-point counter to the A concourse. Then he was saying, no, I went from the T-point to the C concourse. And so his whereabouts and what he said where he was just was different each time we talked about it to the point of at the very end of the investigation I asked him, I said, ██████████, I need you to be very precise with me and walk me though exactly where you went. And so he went through another time line at that point that said – and I asked him to take me through where he would have swiped that I can verify where he's been through the city secured doors, and he told me that he punched in at the counter, he went to T-point \* \* \* So from the counter he went down to T-point, which is an elevator that he'd have to swipe. He says that he did ride out to A, then rode back to T-point. There's no swipes there. But when

he saw on T-point that he was a see coordinator, he went through the employee turnstile, which would have been another swipe but he'd have to swipe the elevator to get to the turnstile.

And then he says that he rode the train out to C concourse and that's when he saw me again, but I'm sitting here thinking, I can't even go from T-point to my office on the C within about 12 to 15 minutes, let alone do all that running in between. He's saying he did it in ten minutes when I saw him at ten after. So that's kind of the gist of the fact finding.

Hancock said that ██████ never mentioned the stroller or claimed that he was working on the jet bridge when Tim May saw him.

On redirect, Hancock stated that during the fact finding ██████ said at one point that he took a train rather than a tug, from T-point but that his story changed. (In his testimony, ██████ denied ever saying that he took a train.)

Hancock conceded that at the fact finding he may have said that he saw ██████ at Concourse C around 5:00, which would not square with his own swipe in at 5:08, because at the fact finding he did not have the swipe information. Manager Employee Resources Steven Tranmer acknowledged that at the fact finding Hancock said he first saw ██████ at around 5:00 a.m.

Hancock testified that at the System Board, ██████'s account was:

So, again, he punches in at the ticket counter terminal, takes a tug. \* \* \* Takes a tug from the terminal to the A gates. Takes a tug from the A gates back to the terminal. Then once he sees he's not in T-point, takes a tug from the terminal to C gates and then is out on the C gates the rest of the time from there.

Hancock stated that ██████'s account at the fact finding contradicted his account at the System Board, and that the time swipe evidence contradicted both versions. At the fact finding ██████ said he punched in at the ticket counter and took a tug from T Point to A Concourse and a tug back to T Point and then a train to C Concourse. Hancock said that this should take at least 30 minutes. But at the System Board, ██████ stated that he took a tug to and from A and a tug to C as well.

Employer Manager Employee Resources Steven Tranmer stated that at the System Board, ██████ was not mentioned except that his name appeared in Elias' statement. Tranmer stated that ██████ did not tell the System Board that ██████ had worked with him. Tranmer recalled ██████ telling the fact finding that he clocked in at T Point, then caught a ride to A Concourse, where ██████ told him he was not scheduled there, and he took a tug back to T Point. ██████ said he took an elevator up and took a train to C Concourse but Nada was not there. He said that he then went to C-41 where he was waved off, and then to C-37 where he talked to the lead and finally to C-35 where he also talked to the lead. According to Tranmer, ██████ told the fact finding that he stayed at C-35 and C-37 the whole time he was at C Concourse. According to Tranmer, at the System Board ██████ said he drove a tug from T-Point to A Concourse and spoke to ██████, went back to T-point, checked the schedule and then drove to C Concourse. Tranmer also stated that ██████ told Hancock at the fact finding that he was on the ramp the entire time. The notes Tranmer made at the fact finding were not offered in evidence. Although Tranmer

testified he attended the fact finding, on the July 12, 2012 termination memorandum (Joint Exhibit 2) he is not listed as among the attendees at the fact finding.

██████████ testified that when interviewed by Management, he said that he had gone to the rest room, came back down, went back, got coffee and went down the ramp when the first flight was coming in. He denied ever saying that he had been on the train, and said that he only told Management he rode on the tug, and then went upstairs on the elevator. He testified that he never left the airport, did not hide, and did not try to get out of work. He stated that he told Tim May he was at work, but also that he was on the Concourse drinking coffee. He stated that at the fact finding and at the System Board, he told his whole story as he had at the arbitration hearing. He specifically stated that he related at the fact finding and the System Board that he had taken the stroller at C-35. He did not recall whether he mentioned ██████████' name, although he did not think so. He also stated that he told the fact finding that ██████████ had waved him off at 6:45 and that ██████████ had seen him.

██████████ testified on cross examination that at the fact finding and the System Board, he said that he took the strollers up at Gate C-35, but did not mention ██████████' name.

██████████, who represented ██████████ at the July 11 fact finding, testified that at the fact finding Hancock said he had seen ██████████ at about 5:00 on July 8. At the fact finding ██████████ said he had looked at the schedule the night before and he was scheduled as A-51 Local Driver, that when he went to the A gates a co-worker told him he was not scheduled there, and so he went back to T-point and checked the schedule, which showed him as See Coordinator. He went to see the Coordinator, who was not there, and Hancock acknowledged that there was a period when the Coordinator may have left to get a schedule. Debrum said he went to C-41 to help ██████████ on a 6:00 originator, but ██████████ waved him off and he went upstairs to get coffee and waited for the first inbound.

Union Representative ██████████ was a member at ██████████'s System Board hearing. ██████████ stated that ██████████ testified at the System Board that his shift was from 5:00 to 1:30, that he arrived before 5:00. He had checked the duty roster the day before and went to A Concourse but found that he was not assigned there. He went to T Point and was told he was to see the Coordinator. He then went to the office but the Coordinator was not there. He saw Roger Hancock around 5:10 in C Concourse. He went to Gate C-41 to offer help but ██████████ and ██████████ waved him off. He went upstairs to the rest room and back down to smoke. He went back up to get coffee and then went to C-35 for the next flight. ██████████ was working the bin there. At C-35 he took strollers to the jetway, and saw Tim May as he was returning. May asked where the fuck have you been, and he replied I've been here. May told him to assist on C-37 where he remained until he was pulled for the fact finding. Hancock, May, ██████████ and ██████████ all said that ██████████ was a good worker. ██████████ did not recall any mention of ██████████.

\* \* \*

Company records (Union Exhibit 1) show the first outbound flight on July 8 was a 6:00 originator at C-41, and the next plane was a 6:25 inbound at C-45. The first arriving plan in Zone 2 was a 7:05 arrival at C-35.

The schedule for July 8 indicates that ██████████ and ██████████ worked at C-35 that day with ██████████ as lead and ██████████ as assist, both starting at 6:30 (Employer Exhibit 1).

Several managers testified that it is common knowledge that an employee assigned as See Coordinator is expected to actually see the Coordinator, and wait at her office if she is not there, rather than wandering off or self-assigning duties.

Pugliese estimated that it is at least 10 minutes by tug, and 10 - 15 minutes by train, from her office to the T Point.

According to Hancock, it should take between 25 and 30 minutes to go from T Point to A, back to T Point and then to C.

██████████ variously estimated that it took 3-4 or 6-7 minutes by tug from T Point to A Concourse. He estimated that it took 6-7 minutes by tug from T Point to C Concourse.

██████████'s swipes would indicate that it is possible to go from C Concourse to A Concourse in no more than nine minutes.

After the fact finding, Hancock obtained security records of ██████████'s swipes. He also obtained statements from ██████████ and ██████████ but not ██████████ because their schedules conflicted. (Hancock did obtain a statement from ██████████ after ██████████'s termination.)

Based on his review of the swipe records, Hancock concluded that ██████████ had spent most of the time between 5:00 and 7:15 in the Concourse (from 5:36 to 6:19 and from 6:33, at the entrance from C-41 to the Concourse, until Tim May saw him at 7:15; there was no swipe showing ██████████ coming back from the Concourse to the ramp). But according to Hancock, at the fact finding ██████████ never said that he had been in public areas of the airport, never said that he was getting coffee, never claimed that he had been feeling unwell, and made no mention of strollers, but said that he was in ramp areas going to different gates looking for work.

The swipe evidence supplemented by statements or testimony (as indicated by \*) shows ██████████'s location at certain times:

- 4:56 Elevator call from terminal to T Point
- 5:10\* Hancock testimony that he saw ██████████ looking at the schedule on C Concourse
- 5:15\* ██████████ statement that he saw ██████████ at C-41
- 5:23 Elevator call up to Concourse by C-46
- 5:30 Elevator call down to ramp at Center core
- 5:36 Elevator up to Concourse
- 6:19 Elevator call back to ramp
- 6:33 Ramp to Concourse by C-41

7:15\* May testimony that he saw █████ coming down the jetway at C-35 with a red cup of coffee

Hancock noted that a coffee shop between C-47 and C-49 sells coffee in red cups. He explained that █████ could get from the Concourse to C-35 without swiping by going through the gate itself, just as a passenger would, where no swipe is needed.

Hancock formed the conclusion that █████ had been out of his work area and had spent a long time in the Concourse, and had lied during the fact finding. He decided that termination was in order, and issued the termination memorandum quoted above. To him, what distinguishes █████'s case from other employees who are away from their work stations is dishonesty:

The issue that I have had and see people return to their work area, we page them, they've missed a flight, they've made a mistake in reading the schedule. There's many – there's just so many scenarios that it could be. It depends on the scenario, but they are not all egregious. They are honest. He just wasn't honest about it. He wasn't where he was supposed to be.

After █████'s discharge, the assignment practice was changed so that now all Ramp Agents are assigned to an originator. In some cases this means that 6 or 8 or even as many as 15 employees are assigned to an originator, many more than is typical for later flights. Previously, at least 4 employees had been assigned to an originator but perhaps half the employees on duty would not be assigned to an originator. Now all employees are assigned to an originator, and are not permitted to leave until the originator pushes.

\* \* \*

The Employer has discharged a number of employees for theft of time. In 2008 Buffalo employee █████ was discharged where parking swipes indicated he had left early without obtaining permission or noting it on the exception log. His swipes indicated a pattern of early departures without clocking out. In 2009 Phoenix employees █████ and █████ were discharged for leaving early without clocking out. █████ left early without punching out. He was gone from the airport, but denied leaving. █████ left early without clocking out. Swipes indicated he had left the employee parking lot before the end of his shift.

In 2012 Las Vegas employee █████ was discharged for leaving early without permission. █████ denied having left early.

All of these cases involved employees who had left the airport.

Houston employee █████ was discharged for theft of time after he had been off premises on two occasions for two hours or longer while clocked in. █████ admitted that he had been in his car for two hours on one occasion and three hours on another.

Midway employee █████ was terminated after he missed a flight and was found asleep in a maintenance van.

According to Union District Representative Mark Waters, Midway employee ██████████ was terminated after he failed to punch out, and swipes indicated he had left the airport. However according to ██████████'s termination letter he had gone missing for nearly an hour, and admitted that he had been "lollygagging." He had a history of prior discipline for among other things failing to punch and leaving without permission.

Denver employee ██████████ was discharged in 2011 for theft of time, and the discharge was sustained by Arbitrator William H. Lemons. ██████████ had been absent for some six hours, and was seen at a supermarket while he was clocked in.

Employee ██████████ had gone missing but when questioned apparently acknowledged that he had been out of his work area. ██████████, who was on probation at the time, received a letter of instruction. ██████████ told ██████████ that he had gone home, but there is no indication that the Company had any reason to believe that ██████████ had left the airport. ██████████ told ██████████ that he had told Management he went home and came back because he had no work to do, but Management disputed that ██████████ ever told Management that he had gone home. Manager of Employee Resources Stephen Tranmer testified that the first time the Company was aware of any claim that ██████████ had gone home was when ██████████ testified in the current hearing.

Union Representative ██████████, stated that at Salt Lake City there has been a problem with employees not punching out on Saturday nights. A manager discussed the problem with him, and told him that there would be a fact finding only if the employees had left the airport. Employee ██████████ gave inconsistent accounts that he had fallen asleep at T Point or had been killing time skateboarding. A manager told ██████████ that if the video showed him skateboarding he would not be terminated. Instead the video showed that ██████████ had left the airport, and he was terminated. Employee ██████████ resigned rather than be terminated after he admitted that he had left the airport while punched in. ██████████ is unaware of any employee being discharged for theft of time who did not leave the airport. He stated that at Salt Lake City, employees frequently spend time in the terminal, and a manager gave him a food coupon, and he was gone for 55 minutes between flights. Sunday morning there is a slow time, with employees starting at 5:00 but the first flight at 8:00. While waiting for that flight, employees watch movies or hit golf balls or go for breakfast, since there is nothing for them to do. They ask permission only if they want to leave the airport. There has not been a meal and rest period memo at Salt Lake City comparable to the one issued in Denver.

Midway employee ██████████ was issued a final letter of warning and two day suspension after he could not be found for three hours. Ultimately it was determined that for five consecutive Thursdays he had not been given an assignment, and just "hung around." The final letter of warning states in part

Your time line of what you said you did is in question. The inconsistency's in your story are evident with regards to ██████████'s and ██████████ work assignments and your City swipes. What you claimed you did that morning is not consistent with an agents normal daily work load and responsibilities.

██████████ you violated a basic and common sense expectation /practice to report to a supervisor when you knew you were not on the daily ramp assignment. I believe it is evident that you did this to get out of working a normal agents work load on these dates. By doing this you violated the Basic Principles.

Midway employee ██████████ disappeared and was not found for an hour or two and did not respond to paging. He claimed to have been at Ben and Jerry's. He was issued a letter of instruction.

Midway Union Representative ██████████ stated that no Midway employee has been discharged for theft of time if the employee was actually in the terminal. A meal and rest period memo had issued at Midway.

Amarillo employee ██████████ stated that at Amarillo employees went to the terminal during drafting or down time or free time, and he never saw anyone terminated for theft of time who did not leave the airport.

Baltimore employee ██████████ was issued a final letter of warning and three day suspension after he was assigned to the Transfer Yard but went instead to the break room and sat. He was missing for about two hours although he was radioed and paged.

Baltimore employee ██████████ was issued a final letter of warning and five day suspension. He worked his originator flight but then admitted to walking the terminal without checking with his supervisor or crew for the rest of his shift, although he had been instructed to work Gate A-11. The Company looked for and paged him but could not find him.

Baltimore employee ██████████ worked only one of his flights and then got breakfast and went to the break room and walked around. He was issued a final letter of warning and five day suspension.

Baltimore Lav Driver ██████████ sat in the break room rather than working his flights. He admitted to having goofed off for a whole day and to failing to perform his duties on multiple flights. He was issued a final letter of warning.

Baltimore employee ██████████, a Bag Runner, was late to a flight because he was at a restaurant in a different Concourse. He was issued a final letter of warning.

Union Representative ██████████ from Baltimore noted that none of the Baltimore employees discussed above was accused of theft of time. He testified that no employee there has been terminated for theft of time if the employee was actually at the terminal. He stated that at Baltimore employees commonly go into the terminal during down time, not only on break time. Southwest uses A and B Concourses, but employees are not prohibited from going to the C Concourse to get food as well.

Houston ramp agent ██████████ went to get food and was away from his area for about 25 minutes, missing a flight. He was issued a letter of instruction.

Dallas Employee ██████████ was issued a letter of instruction (later reduced to a verbal instruction as a grievance settlement) for being in the break room for about 70 minutes, despite being paged. He claimed he had been waiting for someone to pick him up to take him to the freight house.

Dallas Employee ██████████ was issued a letter of warning for failing to work a terminator while missing for over 70 minutes. ██████████ claimed he had been waiting for a pizza delivery but Management determined that the pizzeria he said he ordered from was closed at the time.

Las Vegas employee ██████████ was missing for an hour and a half despite being paged six times, and was found in the break room. She was issued a final letter of warning.

Dallas provisioning employee ██████ received a final letter of warning in May 2011 for failing to provision a flight. He said that he had just forgotten about it. Apparently he had been sitting in the break room. Three months earlier he had been issued a letter of warning for missing a different flight, and ██████ was found asleep in his car, which he admitted to two managers. According to the letter of warning, at the fact finding he contradicted that version and denied having told the managers that he had been asleep.

MCO employee ██████ was administered a letter of warning for having missed multiple flights and displaying an “unacceptable” attitude. Management apparently disbelieved ██████’s account of his whereabouts.

Houston employee ██████ was given a final letter of warning for leaving early and missing flights, although ██████ may have punched out, there being a factual dispute in this regard. A meal and rest period memo was in effect in Houston.

Houston employee ██████ received a final letter of warning. He had failed to load bags on flights because he was upstairs spending time with a girl friend.

Union District Representative Robert Bettinger observed that no theft of time charge was brought in any of the above cases. He stated that there has been no case there of an employee who was actually at the airport being terminated for theft of time. He testified that at Houston a meal and rest period memo issued, but employees are still permitted to go “upstairs” on their free time.

Nashville employee ██████ received a letter of warning for leaving early without clocking out, which “Gave the appearance of trying to get an extra hour of pay.” He admitted to having left early.

New Orleans employee ██████ left work early without punching out, and missed a flight that apparently had been expected to arrive later but which in fact arrived on time. She at first claimed to have left because her sister was injured. She was given a final letter of warning and five day suspension.

Baltimore freight agent ██████ was caught on video leaving work for over an hour, and returning with her dog just before quitting time. She was administered a final letter of warning.

District Representative Mark Waters testified that he is not aware of any case in which an employee who remained at the terminal was discharged for theft of time. On free time agents go upstairs and spend time there.

██████ received a letter of warning which states in part “It has been determined that you were dishonest to Station Leadership by stating that you were ‘around’ when actually you were up in the terminal and not in your work area for over two hours. This constitutes leaving work without permission, which was in violation of the Southwest Airlines Ground Operations Basic Principles of Conduct, including, but not limited to [ Paragraphs 6, 7, and 13].” Lofton had not left the airport.

Grievance Specialist Brian Smith testified that most termination cases involve employees who have left the airport without punching out, and that no employee had been discharged unless the employee had left. He stated that it was common for employees to go to the terminal during free time, to eat or have coffee.

May acknowledged that there have been times when it has been a challenge to locate agents.

## **Issue**

The issue, as agreed to by the parties, is whether there was just cause for the discharge, and if not what should the remedy be.

## **Position of Management**

The Employer argues that it properly terminated Grievant ██████ “for time theft and dishonesty as a result of his leaving his work area for an extended period of time then lying to Leadership repeatedly in an attempt to receive pay and evade discipline for the period he was missing.” It maintains that he gave inconsistent accounts, and that none of the witnesses recall seeing the Grievant between 5:45 and 7:00 a.m. It insists that he was not credible at the fact finding or the arbitration hearing. It asserts that the swipe records and the testimony of other witnesses show that his version was not possible. Specifically, it reasons that the conversation with ██████ never occurred because they could not have been in the same place at the same time. It deems that he told one story until he sensed it was falling apart and then gave inconsistent accounts. It considers that no employer should be forced to employ an individual who takes the truth lightly. It cites testimony that at one point ██████ claimed he drove a tug but later that he rode a train. It asserts that the Grievant for the first time at the arbitration hearing mentioned that he received strollers from ██████.

The Company maintains that “By lying, he was trying to evade discipline and trying to evade losing pay for the two hour period that he left his work area.”

It avers that it has consistently terminated employees when dishonesty is confirmed, including cases of time theft.

The Company cites arbitration cases holding that theft and dishonesty justify termination, even when only nominal amounts are involved.

It considers that it conducted a fair investigation and determined that the Grievant lied at his fact finding, and that returning him to the workplace would send the wrong message that such conduct is acceptable.

The Employer disputes any claim of disparate treatment. It urges that it has always terminated employees when there was evidence of a dishonest act. It recounts that the other employees alleged to have left the work area without permission were not found to have lied about doing so:

the Company concluded that the Grievant left his work area for an extended period of time instead of even receiving his duty assignment and instead of carrying out his job duties but attempting to be paid for hours worked nevertheless. These are two very different fact patterns and thus, the Union has drawn a faulty analogy.

Secondly, by the Union witnesses own accounts, they do not go to the public concourse to work in lieu of the ramp area. Rather, they go there in between their scheduled flights when they have no assigned work to do.

It summarizes that no employer should be forced to employ someone who has proven he cannot be trusted and that the Grievant's own actions cast serious doubt on his trustworthiness.

It asks that the grievance be denied.

## **Position of the Union**

The Union asserts that the Company did not have just cause to terminate the Grievant, that he did not miss work, he did not steal, and he was not dishonest.

It points to ██████████'s testimony as confirming that ██████████'s account at the fact finding was essentially the same as at the arbitration hearing.

It sees inconsistencies in the Company's evidence. It states that Roger Hancock said at the fact finding that he had seen ██████████ at 5:00 a.m. but thereafter gave a later time. It reads Hancock as saying that ██████████ could not travel from T-Point to C Concourse in 12 minutes but that he himself made the trip in 8 minutes. It cites a discrepancy between Tim May's testimony and Employer Exhibit 1 regarding which gates May was assigned on July 8. It also regards May as inaccurate regarding which gate he put ██████████ on, and which employee called in sick. It contends that Steven Tranmer was not at the fact finding, as indicated by Joint Exhibit 2.

It notes that after ██████████'s termination the Company changed its practice and began assigning all employees to an originator, and it references testimony that before July 8, those employees who were not assigned to an originator commonly went to eat and wait for their first inbound flight. It references contradictory testimony among Employer witnesses about the change in the originator practice, and complains that in the Company's view employees who contradict themselves are lying but Managers are mistaken.

The Union accuses the Company of disciplining ██████████ much more severely than other Denver employees who were away from their assigned work stations, citing ██████████, and observing that Graybill was not disciplined for spending up to an hour and three quarters in Pugliese's office. The Union compares employees at other locations who were not at their assigned work stations, although they did not leave the airport, and who were not terminated, including ██████████, ██████████, ██████████, ██████████, ██████████, ██████████, ██████████, ██████████, ██████████, ██████████, ██████████, in some of which cases the Company questioned the credibility of the employees' explanations of the absences.

It distinguishes the cases of the employees who were terminated in that all (including the one case arbitrated) involved employees who had left the airport for an extended time. It also distinguishes the arbitrated case (██████████) as involving an employee who according to the Company brief in the case, had gone missing in the past and had to be constantly monitored, had previous swipe issues, and who had been directed three days earlier to remain at his assigned work location unless he obtained permission

to leave. It emphasizes that ██████ disappeared for over six hours but claimed to have been gone for only 30 minutes and concocted a false explanation.

It avers that ██████ did not miss any flight and no passenger was inconvenienced. It maintains that his account was consistent from the fact finding through the arbitration, as corroborated by ██████ and ██████. It urges that visiting the passenger terminal area was accepted behavior at Denver. It points to testimony of neutral witnesses that ██████ attempted to help fellow agents, and submits that he was hardly wandering around.

It asks that the grievance be sustained and that the Grievant be reinstated and made whole.

## **Analysis and Conclusions**

By failing to check the schedule when he reported on July 8 – and I have no reason to doubt his admission that he failed to do so – Grievant ██████ made a mistake. It is undisputed that the schedule changes frequently from one afternoon to the next morning, and ██████ had enough experience to know this. Had he checked the schedule, the entire incident probably would not have occurred. The question of whether ██████ should be disciplined solely for neglecting to check the schedule is a moot one however. If any discipline is warranted over this misdeed, surely it would be only minor discipline, and much more serious allegations are involved.

His decision to leave Nada Pugliese’s office without waiting for her, after he did inspect the schedule and learned he was to “See Coordinator,” is a different matter. In this regard I credit his account that he did in fact go to Pugliese’s office at some point. It seems likely that Pugliese was absent for some period between 5:00 and 6:00 on July 8, and it is entirely plausible that ██████ arrived at her office during this gap. ██████ testified, and there is no reason to doubt his word, that he went to her office shortly after 5:00 but she was not there. There is circumstantial corroboration for ██████’s account in that the radio log indicates that his wife in fact signed out the radio about two hours later. Furthermore, the radio log indicates that no radios were signed out between 5:00 and 5:57, although they were signed out at frequent intervals between 6:00 and 7:00. This suggests that Pugliese was away from her office, and she herself acknowledged the possibility.

But even if Pugliese was not at her desk, it certainly was not ██████’s prerogative to leave and assign work to himself on the assumption that he would be assigned to Zone 2 as he had been in the past when he was scheduled as “See Coordinator.” I note that in the past, he had always waited to see the Coordinator in person, rather than making assumptions about what his assignment would be. Even if ██████’s assumption about his assignment ultimately was correct, the Company had no way to know what ██████ was or not assuming. In this regard, ██████ compounded the problem by failing to leave a note or otherwise notify Pugliese that he was operating under the assumption that he was assigned to Zone 2.

Since Management had no basis to know what ██████’s thought process was, and knew only that he had not in fact seen the Coordinator, a number of Managers wasted their time hunting for him, diverting time and attention from their normal jobs. I conclude that the Grievant’s failure to do as assigned, and actually “See” the Coordinator amounted to misconduct, for which discipline was warranted. In all likelihood, if this were all that was involved, the Company would have issued a warning letter and perhaps a brief suspension.

Of course, more was involved, which is at the heart of this case. Had ██████ in fact seen the Coordinator, Pugliese would have assigned him to Tim May. May did not indicate what he would have done if ██████ had seen him shortly after 5:00, but it seems likely he would have assigned him as a replacement for ██████, who was scheduled to start at 6:45 but who had called off. ██████ was assigned to Gate C-37, which is where May told ██████ to work.

If May had assigned ██████ as ██████'s replacement, and ██████ had then gone to the Concourse for coffee or cigarettes, as numerous other employees did at Denver, until shortly after 7:00, most likely there would be nothing more to the story. There would have been no real work for ██████ until the inbound plane arrived around 7:00. As the testimony of many witnesses indicates, when employees had nothing else to do, they went off to the terminal to wait for their next flight. As long as the employee did not miss a flight there were no consequences. The meal and rest period memo indicated that employees had to get permission, but that was not how things actually operated. The practice of seeking out the greater comfort of the terminal when they had no actual work to perform, rather than remaining close by the gates, was condoned by Management, at least so long as the employee returned in time for his or her next flight.

But according to the Company, ██████ was not simply doing what everyone else did: instead he chose to evade work on the morning of July 8, and then concocted a cover up story to obtain pay for not working.

There is no question that dishonesty is a serious offense, and I have so held in a prior case involving these same parties. See Case SAN-R-0460/12 (sale of buddy passes). In Case DEN-R-1330/11 Arbitrator William H. Lemons denied the grievance of an employee who had been discharged for time theft. He found as a factual matter that the discharged employee had been off the property for five hours while clocked in. In the course of denying the grievance, Arbitrator Lemons said "In fact, it is clear from the record in this case that Grievant was not altogether candid about what happened, both at his factfinding meeting, and at times, in his arbitration hearing. For example, he changed his story about how he got from the parking garage to where he clocked out, and he still steadfastly maintains that he was away from his assigned work location only thirty minutes, which is not physically possible."

The Grievant's credibility is critical in this case, since the Company regards dishonesty as a more serious offense than shirking duties. The Company states in its brief "It was not leaving his work area without permission that triggered the Grievant's termination. Rather it was the fact that he repeatedly lied about it to his Leadership in an effort to get paid for the time that he was absent from his work area and evade discipline."

My assessment of the testimony and exhibits in this case leads me to the conclusion that Grievant ██████'s testimony at the arbitration hearing was credible, that his account was essentially accurate, and that he neither engaged in theft of time nor lied to Management.

As stated above, I find that the Grievant did not in fact check the schedule immediately upon his arrival, but assumed that the schedule posted the previous day was still in effect. Under that schedule, ██████ was assigned to Gate A-51. It is entirely plausible, therefore, that after punching in, ██████ headed for the A Concourse, as he claimed.

The most problematical detail in ██████'s entire account is the conversation with ██████. ██████ did work at Gate A-51 on July 8, but could not recall whether or not he spoke with ██████ that morning.

Based on ██████'s time estimates, ██████ should have arrived at A Concourse around 5:00 or a few minutes later. ██████ swiped at the A Concourse at 5:12. The Company posits that this means ██████ spoke to ██████ after 5:12, which would make the rest of ██████'s time line improbable (back to T-Point, then to C Concourse, then to C-41 to offer ██████ help). This however assumes that ██████ spoke to ██████ after ██████'s swipe. If that were the case, however, ██████ would also have swiped at the A Concourse, and there was no such swipe. The lack of a swipe by ██████ at A Concourse indicates that if in fact he spoke to ██████ in that area, the conversation was at some point before ██████ reached the place where he swiped at Concourse A. Whether indeed ██████ spoke to ██████ at A Concourse is troubling, but ██████ did in fact work at A-51, and ██████ had no real reason to fabricate how he learned that he was not actually assigned to A-51. Given the plausibility of the rest of his story, and the corroboration for much of it, I am inclined to give him the benefit of the doubt in this respect.

I have no doubt that ██████ actually went to Gate C-41 and offered to help ██████ and ██████. Both of these employees confirmed that ██████ did come by offering to help some time before their originator departed, but that they waved him off since they did not need assistance. ██████'s 5:23 swipe in this area gives further credence to his story. The Company questions the time line, based primarily on ██████'s estimate of when he saw ██████. In this respect though, the timing is not nearly as important as the corroborated fact that ██████ did go to Gate C-41 at sometime between 5:00 and 5:30 to offer help.

The fact that the Grievant did offer to help at Gate C-41 during the first half hour of his shift undercuts the contention that he intended to spend the morning hiding and loafing.

It appears that the Grievant spent most of the next hour and a half in the terminal, drinking coffee and smoking. In this respect he did exactly what other employees at Denver and many other airports do when they have no real work to do. The Company does not point to any flight to which ██████ would have been assigned prior to the one on which he was seen. A host of witnesses testified that at Denver and elsewhere, employees routinely ate, had coffee or "hung out" in the terminal when there was no work to do. What the Grievant did in this respect was no different. Although meal and rest period memos had issued at Denver and at some other airports, ostensibly requiring Management permission to visit the Concourse, it appears that these were largely disregarded in practice. As indicated above, the Grievant can be faulted for failing to see Coordinator Pugliese and for failing to keep Management apprised of where he was, but he cannot be regarded as shirking non-existent work.

At around 7:00 the Grievant went to help at another gate without being directed to do so. ██████ corroborated that he handed off two strollers to ██████ to take up the ramp at Gate C-35 for the 7:00 inbound, and that Tim May came by after ██████ had seen ██████. Like ██████ and ██████, ██████ is a disinterested witness and there is no reason to doubt his word. At the arbitration hearing, ██████ could not recall the specific date when this took place, but it seems that he and ██████ were describing the same event, since ██████ testified that he does not work with ██████ often, and because ██████' schedule indicates that ██████ was working at C-35 on the morning in question. (See Employer Exhibit 1.) Thus all indications point to July 8 as the date of the C-35 stroller incident.

May saw ██████ at roughly 7:15, which concludes the period during which ██████ was allegedly dodging work.

██████'s voluntary appearance to try to help at Gates C-41 and C-35 is not consistent with the portrayal of him as an employee who intended to evade work on the morning of July 8. To the contrary, there was no work for him to evade, and he at least attempted to find some work to do.

I accept that ██████ was not hiding out and attempting to receive pay for loafing. While ██████ had no basis for his assumption that he would be assigned to Zone 2, other than past history, I credit his version that he did in fact make this assumption, and he checked the scheduled flights and saw that there were none in Zone 2 until around 7:00 a.m. If so, there would be no actual work to perform until around 7:00 a.m., and no reason to prevent ██████ from taking an extended break in the terminal, just as many, many other employees did, at Denver and at other airports when there was nothing specific for them to do.

There is a further basis to accept that ██████ was not avoiding work during the first couple hours of his July 8 shift. Everyone who was asked, including Tim May (who characterized ██████ as a better than average worker) agreed that ██████ was a hard worker and that it would be out of character for him to go off and hide and leave the work for others to do. Normally character and habit evidence has little value in labor arbitration. But the unanimous depiction by ██████'s co-workers of him as someone who pitched in rather than loafed was quite impressive.

The Company posits that ██████ deliberately hid out on July 8, and then tried to avoid losing pay by giving a false account to Management. It regards dishonesty as the greater offense.

But there was no basis for him to believe he was in any jeopardy in this regard. Under the collective bargaining agreement employees have guaranteed eight hour shifts. (See Article Four (D).) Apparently this results in the scheduling of considerable downtime before, after, or between flights, when there is no useful work to be performed, particularly on early Sunday mornings when there are relatively few flights. Nothing in the Southwest culture demands that employees "look busy" when there is no useful work for them to perform. Under the assumption that there was no work for him to do, ██████ did what his colleagues did, he went to the terminal and hung out. To be sure, Grievant ██████ was guilty of not following instructions by failing to See Coordinator Pugliese. But he did not do so pursuant to any scheme to avoid work that was non-existent. He had no reason to expect any repercussions from following standard practice. There was no basis for him to feel any need to lie to Management. ██████ had no reason to try to deceive Management into thinking he was standing by at the gates, when employees were not expected to do so. It was accepted that if an employee had no reason to be in the vicinity of a gate, he or she was free to go to wait in the terminal and get some food. What ██████ did was at the time an accepted practice (later modified to require every employee to be assigned an originator).

In the Company's view, ██████ first lied to May when May saw him and asked where he had been. According to ██████, he replied that he had been "here." I believe this is what ██████ told May, and it was literally true, since he had been "here" at the airport the entire morning. May recalled ██████ saying that he had been close by the C-35 to C-43 area. I am not convinced that this is what ██████ actually said to May, and I believe that it represents May's interpretation of ██████'s statement that he was "here."

The Company contends that ██████ gave inconsistent and incredible accounts or omitted important details at the fact finding and the System Board. No transcript was made of either, and although Tranmer stated that he took notes at the fact finding, they were not provided at the arbitration hearing. So what ██████ said at the fact finding and the System Board, and whether he spoke credibly, is itself the subject of a

credibility dispute. According to ██████████ and ██████████, ██████████'s story at the fact finding and the System Board was essentially the same as his testimony at the arbitration hearing. Hancock and Tranmer asserted that ██████████ gave inconsistent accounts or omitted important details. I need not make specific findings as to exactly what ██████████ said or did not say at the fact finding or the System Board, for my overall finding is that he did not give a deliberately false account.

If ██████████ did not specifically state that he had been in the terminal, he was simply failing to state the obvious. It was understood that employees who had nothing specific to do were free to wait in the terminal. If ██████████ did not specifically mention that he had bought a cup of coffee, he was simply not mentioning what he knew that Management already knew: May had seen him coming down the ramp at Gate C-35 with the coffee. Since red coffee cups come from a restaurant in the Concourse, ██████████ also knew that Management knew he had been in the Concourse.

Tranmer averred that rather than simply failing to mention that he had been in the terminal, the Grievant told the fact finding that he had been at C-35 and C-37 (or on the ramp) the entire time that morning. As to whether ██████████ claimed to have been at C-35 and C-37 the whole time, Tranmer's account was not corroborated by Hancock. Further Tranmer, like May, was summarizing rather than quoting. It seems to me quite likely that he also attached his own interpretation to ██████████'s statement that he had been "here" or "around."

Hancock asserted that the Grievant gave inconsistent accounts, but his testimony was largely about his impressions, and he cited few specific alleged contradictions. I will address these below. It is conceivable that there were some mistakes, contradictions or inconsistencies in what ██████████ said. Not all such indicate a deliberate lie. Surely inconsistencies, contradictions, and variations from demonstrable facts, such as those established by time swipes, may indicate that a witness is lying. But they may also be the product of mistake, misunderstanding or miscommunication. What Hancock regarded as inconsistencies by ██████████ may amount to no more than a communication barrier. In this regard, I note that English is apparently not ██████████'s first language, as the transcript indicates at several places. (See pages 365, 366, 367, 369, 370-71, 377, 383-84, 387-88, 396, 403.)

This record includes ample instances of contradictions by witnesses who surely were not lying. ██████████ and ██████████ gave different accounts of when they saw ██████████ on the morning of July 8, although it is clear that they both saw him at the same time. One, or perhaps both, gave an erroneous time estimate, or failed to remember accurately. Hancock and ██████████ disagreed as to whether ██████████ asked for help at Gate C-41 when Hancock visited there. ██████████ may be correct in this respect, since there is no indication that Hancock actually did arrange for any help at the gate. Graybill and Pugliese differed as to whether they spoke about ██████████ by phone or in person. At the fact finding Hancock contradicted himself as to whether he first saw ██████████ at 5:00 a.m. on July 8, or sometime after 5:08. May testified that he himself was assigned to Gates C-29 to C-35, but the schedule has him at C-43 to C-49. May also was incorrect in stating that he told ██████████ to work at C-35, rather than C-37 as other evidence indicates. Tranmer testified to having attended the fact finding, but the termination letter does not list him as among those present.

So contradictions and inconsistencies may indicate that a witness is being dishonest, but not necessarily. I am surely not infallible in making credibility resolutions, but I watched and listened as the Grievant testified, and my impression was that he was an honest witness at the arbitration hearing, even though he contradicted himself as to how long it takes to travel between T-Point and A Concourse.

Hancock related that the Grievant contradicted himself as to whether he went first from T-Point to A Concourse or from T-Point to C Concourse. ██████'s testimony that he went to A Concourse first seems plausible, since there is no reason to disbelieve his admission that he failed to check the current schedule and was initially under the impression that he was to work at Gate A-51 that day. Hancock's testimony in this regard was somewhat conclusionary, and while this is hardly surprising since witnesses seldom remember verbatim what someone else said, nonetheless it is easier for me to assess whether a person contradicted himself if I know the speaker's words rather than someone else's judgment. In any case, it would make little sense for ██████ to tell Hancock that he went first to C Concourse and later to A Concourse, when it is clear that he wound up at C Concourse. The claimed contradiction may be nothing more than a miscommunication between ██████ and Hancock about the sequence of events.

According to Tranmer (and Hancock on redirect) ██████ contradicted himself between the fact finding and the System Board as to whether he took a train or a tug between T-Point and C Concourse. I note that at one point during his testimony, I had to ask clarification whether he was using the word "tug" or "truck." (See transcript page 361.) Even if he did, the method of travel is not a significant point. There is no question that he did in fact go to C Concourse.

While ██████'s testimony was corroborated by neutral employee witnesses, the Employer asserts that it was also contradicted by the records of the time swipes, and that it is impossible to square ██████'s story with the time swipes. For the most part, this theory hinges on the accuracy of Hancock's recollection placing ██████ in C Concourse at 5:10. But at the fact finding Hancock gave a different (and concededly incorrect) estimate of when he saw ██████. Hancock did not testify that he checked his watch or otherwise verified the time, and his testimony in this regard is an estimate. As the discrepancy between ██████ and ██████ as to when ██████ came to Gate C-41 indicates, such estimates are subject to question. Under the indisputable time line based solely on swipes and not on human recollection (and in this regard I assume that the swipe clocks are synchronized) it would be possible for ██████'s movements to be as he described them.

In summary, I conclude that Grievant ██████ 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.

I therefore conclude that the Company did not have just cause to terminate him. The Company did have just cause to impose discipline for his disobeying the See Coordinator instruction on the schedule. Appropriate discipline for that offense would be no more than a final letter of warning with a five day suspension. I shall modify the discipline accordingly.

A final comment is in order. The Union argues in effect that an employee may not be discharged for theft of time unless he or she leaves the airport premises. Although being caught elsewhere while punched in is strong evidence of a deliberate intent to cheat the Company, it is not necessarily the only such evidence. In this case I need not and do not hold that employees may be terminated for theft of time only if they remove themselves from airport premises, and nothing in this opinion should be regarded as expressing a view on that matter.

## Award

The grievance is sustained in part. The termination is abrogated and converted to a final letter of warning and a suspension of five work days. Grievant [REDACTED] shall be reinstated and made whole for economic losses suffered, except for the period of the suspension. Jurisdiction is retained for the limited purpose of resolving any disputes that may arise in connection with the implementation of this remedy. Pursuant to Article Twenty Section One (C) of the collective bargaining agreement, the arbitrator's fee and expenses are allocated to the Company.

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Matthew M. Frankewing