

ARBITRATOR'S OPINION AND AWARD

In the Matter of Arbitration Between:

May 18, 2016

SOUTHWEST AIRLINES COMPANY

and

TRANSPORT WORKERS UNION OF AMERICA, AFL-CIO
Local 555

Grievance: HOU-P-2232/15 (Agent X Discipline)

Before

Elizabeth Neumeier, Arbitrator

Representing:

The Company: Vance R. Foster, Manager of Employee Resources, Provisioning,
Southwest Airlines Co.

The Union: Robert Bettinger, District V Representative, TWU, Local 555

Statement of the Award: The grievance is sustained. All references to the discipline will be removed from the Grievant's file. In accordance with Article Twenty, Section One, Paragraph C, the costs of the arbitration shall be borne by the Company.

BACKGROUND

Southwest Airlines Company (Company or Southwest) and the Transport Workers Union Local 555 (Union) are parties to a collective bargaining agreement (CBA) effective July 1, 2008 through June 30, 2011, and continuing through the time period relevant to this grievance. In this case the Union protests that the Grievant was given a Letter of Warning (LOW) and three-day suspension without just cause.

The Grievant has worked for Southwest as a provisioning agent at the Houston station (HOU) for 17 years. On September 1, 2015,¹ the Grievant swiped in at 1:33 PM and was assigned to truck #9, front start. After a slide partially deployed² when he began to open the forward galley service door, the Grievant was given a notice of fact finding.

On September 15, the Grievant received the following results of fact-finding:

A fact-finding was held on Friday, September 11, 2015 to discuss your involvement in an incident at gate 23 on September 1, 2015 which resulted in a partial deployment of the evacuation slide. Present at this meeting were you, TWU Representative Ronnie Carker, Jerome Kelly, Assistant Manager Missy Putz and Manager Brent Spencer.

After a thorough and complete investigation into this matter, and after a review of the testimony and documents provided at the fact-finding. We have determined that you failed to follow proper procedures with opening the Galley Service Door which in turn contributed to the incident stated above. We have also determined that you have received training in our Company policies and procedures and you are well aware of our safety rules and regulations. This behavior is unacceptable, and is in violation of the Southwest Airlines Ground Operations Basic Principles of Conduct, including, but not limited to, the following:

14. Performing your job in a careless, negligent, or unsatisfactory manner.
28. Failure to comply with safety rules or regulations

Based on the above and because of your actions, this letter

¹ All dates are 2015 except as otherwise indicated.

²The Company refers to what occurred in this incident as a “partial deployment.” The Union used the description “fell out of the cradle” or “popped” and objects to calling it a deployment since the slide did not inflate.

will serve as a **Letter of Warning**. In addition, you will receive **three (3) disciplinary days off without pay** at a time to be determined by Station leadership. Please be advised that the behavior that you have displayed will not be tolerated. Any further violations of this nature may result in discipline, up to and including termination. If you are unclear as to what is expected of you, or if there is anything that we can do to assist you, please do not hesitate to contact any Manager.[JX 2, pg. 9. Emphasis original.]

The Grievant signed the letter “under protest.”

On September 15 the Union filed the instant grievance requesting that the discipline be removed. The grievance was denied by the Company and, after the System Board deadlocked on October 29, the Union appealed the grievance to arbitration. The Grievant has not yet served the three-day disciplinary suspension. Both parties agree that the instant case is properly before the undersigned arbitrator for final decision.

The Company offered testimony from Missy Putz, HOU Assistant Manager-Provisioning (AM-P), Steven Crosby, HOU Manager of Labor Relations (M-LR), Robert Rodriguez, Senior Manager of Standards and Regulatory Compliance (SM-S), Evan Jones, Manager-Training Program(M-TP), Bob Watkins, Manager of Labor Relations (M-LR), and Warren Leatham, Manager of Labor Relations (M-LR).

The Union offered testimony from Robert Bettinger, District V Representative, the Grievant, in addition to 8 other agents and/or station representatives

On September 1, after she was made aware of the incident, AM-P Putz consulted with Provo Manager, Brent Spencer, and, after receiving the Grievant’s statement, pictures, and additional information from ground ops, issued the fact-finding notice. The Grievant’s statement describes the “Nature of Event as “door cracked, but slide not disengaged” and reads as follows:

Flt #206 on gate #23 after raising box walked to aircraft door – no flag, door cracked, pushed and noticed slide was engage, at that point I stopped and called a supervisor. [CX 3.]

Photographs were taken, that day, showing the slide partially deployed and the girt bar fully engaged. (CX 4.) Watching the video obtained from the airport, Putz described truck 9 approaching gate 23, and the truck box moving upward toward the level of the galley service door. The Grievant walked up to the door, which was cracked, and pulled on it four times. She

said that was the point she believes the Grievant realize the girt bar was engaged, and when the slide partially deployed. She said that, when he approached the galley service door, he should have gone up to the window and looked in the porthole to verify that the red flag was not across the window. Then, before opening the door, he should have been looking down to ensure that the girt bar was not engaged. She said that management was surprised at how many times he pulled on it, because, although the doors are heavy, he should have been looking to see what the restriction was. Putz said that, at the fact-finding, the Grievant did not remember looking at the girt bar.

The Provisioning Manual contains the following:

2.1.8 Galley Service Door Procedure

Revised: 06/01/2015

WARNING: At no time should a Provisioning Agent attempt to open the galley service door if it is not cracked open or if the red flag is visible through the porthole. In the event the steps are not met, the Provisioning Agent should knock several times to get the Flight Attendant's attention. Performing a visual check on the girt bar is the most critical step to ensuring safety.

Note: Agents may open an uncracked galley service door only on originating aircraft

Note: There may be a slight delay before Flight Attendants crack the door as doors will not be disarmed until the "A" Flight Attendant verifies the movement of the jetbridge or air stairs towards the aircraft.

Aircraft galley service doors have evacuation slides that, if engaged, immediately inflate and could cause serious injury to the Provisioning Agent(s). Caution should be exercised when opening the galley service door. To avoid accidental deployment, the following procedure must be followed to ensure an unsafe operation:

1. Ensure the galley service door has been cracked open by the Flight Attendant.
2. Ensure the red flag has been removed from the porthole.

Figure 2.5 Visually Check

* * *

3. Verify that the area behind the door is clear prior to opening the door.

Figure 2.6 Verify Area Behind Door is Clear

* * *

4. Perform a visual check to confirm the girt bar is not engaged.

Figure 2.7 Check Girt Bar

* * *

5. Use both hands to slowly open the galley service door.
WARNING: For the aft galley, only one galley door shall be open at a time. The opposite galley door provides fall protection for Agents and Passengers.

Note: Do not open galley service door holding bags of ice, sodas, cups, etc.

Figure 2.8 Proper Door Handling Points

* * *

[CX 6. Emphasis original.]

AM-P Putz testified that if the girt bar is engaged, the slide could fully deploy and hurt a provisioning agent by pushing them off the back of the truck or over the guard rails. Or, it could deploy inside the aircraft injuring crew members or customers. The video shows that the Grievant did not look in the porthole, as indicated in Figure 2.5, and did not visually check the girt bar, as indicated in Figure 2.7.

The Grievant's training record indicates that he completed course EP 15-R, Employee Policies Recurrent 2015 on October 5, 2015, and that recurrent training on September 15, 2014. (CX 7.) Also, on March 7, 2010, he finished the course on Provisioning Flight Line Safety.

AM-P Putz testified that, at the fact-finding, the Grievant explained how he approached the truck and they talked about the procedures he is supposed to follow, including the seriousness of the event and how he could have been injured or injured another employee, including, possibly, death. They watched the video and explained to him his errors, but he showed no guilt or ownership of it and did not appear to understand the severity. His most common answer was he did not remember. Prior to the fact-finding she reviewed the video with Union Representative X, who commented that he was surprised about how many times the Grievant had pulled on the door. At the results meeting, the Grievant said it was the flight attendant's fault.

On cross examination AM-P Putz said that the Grievant is a good agent. This performance appraisal, for the period 04/14-04/15 includes the following comments under Attitude:

We are proud to have Agent X as part of our Southwest Family for

17 years. He follows what he has learned about safety on the job. Where ever he is positioned to work, he goes with a positive attitude and is able to recognize and act upon time constraints. He adjusts to our always changing working conditions and can handle any irregular operation that comes his way. Agent X supports our Company policies and works well with his Peers and Supervisors. He is empathetic with the flight crews and works towards satisfactory resolutions to meet their needs. He comes to work in his complete uniform and his friendly smile is refreshing. He uses good judgment when helping. He works hard, stays on top of [his] flights and does it in a timely manner. Thank you Agent X!!! [UX 1, pg. 1.]

and the following comments under Aptitude:

Agent X is no stranger to hard work and dedication. He remains consistently one of Southwest Airlines' brightest stars here at HOU Provo. This is evident in the personable yet professional way in which he handles each of his flights. He shows a sincere interest and ensures the crew has everything [they] need. He is highly regarded by his fellow Coworkers and often provides them with support and guidance. He performs his job with a genuine smile and is never at a loss for words! It's rare not to catch him in a friendly conversation with his cohearts, giving them the feeling that they are working with a Company that truly cares for each other. He adheres to the Company's, maintains good grooming practices, closely follows all safety regulations, and uses his time productively. Thank you Agent X, for your many years of excellent Southwest Airlines service. [UX 1, pg. 2.]

AM-P Putz acknowledged that she did not know whether, when he was trained in 2010, the Grievant was taken out to the airplane and shown how to open up the door. She read the description of the provisioning flight line safety class, but did not look at a module or pictures. Referring to photographs of the galley service door, she said that when opening the door you can see the left-hand side of the girt bar, but not the right-hand side until the door is farther open. The Grievant stopped, half way before opening the door, when he realized the girt bar was engaged. She did not ask the mechanic why the slide did not deploy.

AM-P Putz testified that she worked in provisioning for one year and one month, but not as an agent. She said that, if following proper procedures and looking, she would see the girt bar before pulling the door halfway open. She acknowledged that the doors are heavy and sometimes you really have to yank. She was aware of one other incident of the slide coming out of the cradle. However, that was different because the left side was not engaged but the right side was still hooked on. That employee was not disciplined because he followed correct procedures. With respect to looking for the red flag in the window. AM-P Putz said that she did not know

what the Grievant could see when he was raising the box and walking toward the aircraft. The Grievant did say he was looking for the flag and she believes him to be an honest person. The flag was not across the window, meaning it was clear to open the door.

M-LR Crosby testified that at the system board he asked the Grievant whether he had followed all proper procedures and he initially said yes. Then, after about 15 minutes, he finally said that he should receive discipline. One of the biggest issues at system Board was whether Provo agents can view the girt bar with the door cracked. At the Union's request they went to the in-flight training facility for a demonstration on a replica of the 737. From what he and the in-flight instructor could see, with the door cracked you can actually see both sides of the girt bar. The Company is not required to issue progressive discipline for egregious safety violations. In July 2015 a Baltimore Provo agent was terminated for safety violations including "your failure to check the portal window to see if there was a flag indicating if the door had yet to have been unarmed." (CX 8.) Although not mentioned in the letter, Crosby was aware of that agent having received previous discipline.³

On cross examination, M-LR Crosby acknowledged that the Union contested being able to see both sides of the girt bar. Further, the jetway side door was used for that demonstration, not the galley service door. He consulted with Provo Manager Spencer on the discipline and said the number one purpose was to change behavior and, number two, was to recognize the importance of safety violations. He said that a letter of warning, days off, or termination would be determined depending upon the severity of the situation and what was in the employee's file. He agreed nothing was in the Grievant's file and nothing to indicate that in his 17 years of service he has ever done this before.

M-LR Crosby further testified on cross examination that the training manual talks about procedures for the door but they do not take agents out to it. Approaching the door, when it is slightly cracked, it is not possible to see both sides of the girt bar. To do that the agent must crack it enough to put your hands in and push the door open a little more. He agreed that nowhere in the training are agents told what percent to open the door safely.

SM-S Rodriguez testified that most of his 20-year career has been in provisioning and provisioning training. As a provisioning agent he was trained in galley service door procedures. To open the door in a safe manner he must make sure the door is cracked, look through the porthole to see that the orange or red flag is not across the porthole, then conduct a visual of the girt bar prior to opening the door. As training coordinator he taught the same thing to other employees and, as an instructor, to new hires and in recurrent training. He said that when the door is initially cracked it is not possible to see the girt bar. When you push the door on the right-hand side you are opening it just a little bit and, when you look down, you can tell before you fully open the door. He said you would not push the door halfway open to see that the girt bar was engaged. He also said that the principles set forth in the Provisioning Manual Section

³ The Company stipulated that the termination was grieved and settled on a non-precedent, nonreferable basis.

2.1.8 have remained constant throughout his career. The galley service door is something to be taken very seriously because, if the slide deploys, the employee could definitely be in harm's way. Both flight attendants and provisioning agents are responsible. Reviewing a video showing a slide deploying, he could not confirm that it was shown to provisioning agents. (CX 9.) The slide takes less than five seconds to deploy.

On cross examination SM-S Rodriguez testified that it is only necessary to open the door 6 inches to view the girt bar. He was taught "you open, you pushed it, and you do a visual, and you look down." When he was in training they would demonstrate how to open with a mock door but he could not say if all employees get hands-on training.

M-TP Jones has worked for the company for 18 years and currently manages the trainers who train provisioning agents. He testified that the computer-based training module created in 2010 by provisioning training covered flightline safety. Slide number 31 of 44 lists the following three steps:

- 1.) Make sure the Galley Door is... **Cracked**
- 2.) Make sure the **Red Flag** is not across the port hole
- 3.) Visually look to make sure the **Girt Bar** is disengaged [CX 10, pg. 4. Emphasis original.]

Joan said that at the end of each training module the employee is asked questions and will see any wrong answer highlighted in red. The employee must then review the course and repeat the question. All of the questions must be answered in the entire module. The Grievant passed this training in 2010. (CX 7.)

On cross examination M-TP Jones acknowledged that the training module does not say how far the agent is supposed to open the door. From his experience, working on the line, you have to open the door at least half way before you can see both hooks. He said, however, that you should never get to that point. Although the doors are all on hydraulic assist, some can be more difficult than others to open and require some momentum.

M-LR Watkins previously worked in provisioning, as an agent, a provisioning supervisor and a provisioning manager. He was trained on the galley service store procedures and expectations. He said it is important to do a visual inspection of the girt bar every time because a number of things could happen. The flight attendant could forget to unhook it from the two clips. As the door is opening it can bump into something, such as a trash can or beer kit, and fall back onto the clips. So, as you are opening the door, you are looking at it to make sure that does not happen. If it does happen and you keep opening it, you can have a slide deployment. He described an incident when he was in Phoenix, when an operations agent open the front door before the flight attendant had a chance to unhook the girt bar. The slide inflated and actually pushed him back into the jetway.

On cross examination M-LR Watkins testified that he was not aware of any discipline for letting a slide fall out of the cradle.

Representative Bettinger testified that he has worked for the Union for more than 20 years and has been District Representative for nine years. In that time he has never seen anyone, i.e., a ramp, provisioning or operations agent, disciplined for a slide falling out of the cradle before this case. He said that the Company put out a “Provo in the Know” notice following an incident in Denver. The notice states:

November 16, 2015

Door Procedures

From: Robert Rodriguez, Cabin Services Standards and Regulatory Compliance

Less than five seconds— that is all it takes for an aircraft slide to deploy. So far in 2015, there have been more than 80 events in which the aircraft doors have not been disarmed properly. While most of these events were close calls, four resulted in full slide deployments. Provisioning Agents can help prevent inadvertent slide deployments by following proper procedures each time they open the aircraft service door.

In one recent event, a Provisioning Agent began to open the galley service door without verifying the red flag was removed or visually confirming that the girt bar was disengaged. The Agent eventually noticed the slide was engaged and stopped the process before it fully deployed. While Flight Attendants have the first touch point to ensure door procedures are followed, Provisioning also has a role in door operations.

Upon arrival, Flight Attendants cannot disarm doors until there is forward movement of the jetbridge or portable stairs. This could result in a slight delay of the doors being disarmed and cracked. Provisioning Agents should not attempt to open the galley service door if it is not cracked (with the exception of originating flights) or if the red flag is visible. Instead, the Agent should knock to get the Flight Attendant’s attention and follow the *Galley Service Door Procedures* as stated in Section 2.1.8 of the Provisioning Manual to enter the galley safely. Once the door has been cracked, a visual check must be performed to ensure the girt bar is not engaged.

Over the next several months, you will see a heightened awareness on Galley Door Procedures in an effort to avoid potential injuries

and unnecessary costs. [UX 2.]

Bettinger testified that, in that recent incident, the ramp agent, Agent Y, saw that the flag was in position to show him the door was good, it was cracked, and he went to open it. As he did so the door had momentum, and the slide did deploy. No one was hurt, and the flight attendant took complete responsibility and told the captain. Maintenance was called and the flight took a delay. Agent Y was shaken up, taken off the line and put in the warehouse. A couple of days later his manager notified him that the flight attendant was now saying it was not her fault. Agent Y requested a fact-finding meeting, but his manager said no and he received no discipline.

On cross examination Bettinger said that, as an Ops agent, he was never trained to open a galley door safely. He said that he has had a slide come out of the cradle, but never had one that deployed. He was never disciplined when that occurred. He agreed that the video of the Grievant shows he did not place his head toward the porthole window with his hands on each side. He added that Section 2.1.8 of the Provisioning Manual says to verify that the flag is down but does not say “put your face flat on the porthole.” He acknowledged that the picture in Figure 2.5 does show “the guy’s head looking in the porthole.” He also agreed that the video shows that the Grievant pulled on the door four times but added he has had to do that numerous times because not all doors open right up.

The Grievant testified that the red flag removed from across the porthole on the aircraft galley door notifies him that the flight attendant did her job and disarmed the bar. On September 1, as he went up to the airplane he visually saw that there was no flag in the window. He did not have to put his face in the porthole to see. His second indication was that the door was cracked. He said he can see the girt bar, on the opposite side, when the door is “like half way.” The doors are not easy to open and not all open the same. He stopped opening this door after he noticed that the slide dropped out of its cradle, and called for a supervisor. Maintenance came and repacked the slide, taking 3 to 5 minutes. The Grievant said that he followed the training he had received, but no one has ever taken him to the airplane to show him how far to open the door and when to stop. He also said that this has happened to other agents in Houston but they have not received discipline. If he had not stopped opening the door he could have gotten hurt, but he could not have prevented this from happening. The Company did not take him off the flight line after this incident or counsel him about having done anything wrong.

On cross examination the Grievant acknowledged that he received initial training and, on May 9, 1998, he completed Ground Operations Training and received a score of 100 on the “Galley” test. (CX 11.) He added, however, that this was a handwritten test and he was never physically trained on an actual aircraft door. He said that, on September 1, he did look down at the girt bar but did not see it until he opened the door at a certain angle and then it was already too late because the slide dropped down. He did not bend his knees to look through the crack door, because he was never taught to bend down to look and, when holding the heavy door, you cannot bend your knees. The Grievant said that when, at the fact-finding, he was asked if he visually inspected the girt bar he responded that he did not know because he did not understand her question and did not recall. After watching the video, he saw his head go down. He denied saying, at the system board, that he deserved discipline and feels he did his job properly. This

had never happened to him in his 17 years. He agreed that he had a responsibility but does not believe he should have received discipline.

The Union offered testimony from 10 agents who are currently or had previously worked as Provo agents. They testified, generally consistent with one another, as to the following points:

- The training offered takes place in a classroom or online, or involves following another agent on the job. There was not “hands-on” training for how to safely open the galley service door. Agents were not shown the video of the slide deploying.
- Unless there is condensation, it is possible to see whether the flag is across the porthole window without peering into the window at close range.
- The doors are heavy, approximately 500 pounds, and can be difficult to open.
- To see both clips it is necessary to open the door more than a crack. Sometimes the casing protrudes requiring the door to be open even more.
- There have been a number of instances in which the slide “popped” or slid out of the container, requiring maintenance to repack it. Management was aware of such instances but did not discipline the Provo agent.
- The actions taken by the Grievant in this instance are consistent with the way work is normally performed.
- The new trucks that have been introduced in Houston have a narrower platform making it more difficult to open the door and see the girt bar, because the agent has to stand in front of the door rather than to the side.

Company witnesses Rodriguez and Cosby testified on rebuttal about the training that Provo agents completed. M-LR Warren Leatham, who worked in the field for 20 years, much of the time in provisioning, testified that he is shocked to hear that it is nearly impossible, or very hard to see the girt bar. He has had flight attendants not disengage the girt bar and been able to resolve it without popping or deploying the slide. Referring to photographs, he stated that it is possible to see the clips without touching the door. (CX 18.) He received extensive training as a ramp agent and Provo agent and taught that the the girt bar is more important than the flag because it can save your life. Agents have been disciplined for this violation including Agent Z in 2015, Agent A in 2011, and Agent B, in 2014. (CX 8, 12, and 19.)

RELEVANT PROVISIONS OF THE COLLECTIVE BARGAINING AGREEMENT

ARTICLE TWO SCOPE OF AGREEMENT

A. **Recognition.** The Union is recognized by the Company as the sole and exclusive bargaining agent for the Employees of the Company based in the United States, its territories and possessions, who comprise the class and craft of Ramp,

Operations, Provisioning, and Freight Agents. The Union reserves the right to defend and protect any covered Employee.

* * *

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.

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

**ARTICLE TWENTY
GRIEVANCE/SYSTEM BOARD/ARBITRATION
DISCHARGE and DISCIPLINE**

**SECTION ONE
PROCEDURES**

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

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.

D. **Witness Pay.** Any Employee called as a witness shall suffer no loss of pay at any step in this Article. Cost of witnesses, if any, shall be paid by the party who has called them.

E. **Time Frames.** For the purpose of this Article, a working day shall be defined as Monday through Friday, excluding all Company recognized holidays. It is expressly understood and agreed that, if any of the time frames set forth in this Article are violated by the Company, the Employee shall be awarded the desired settlement without precedent. Furthermore, if the time frames set forth are violated by the Union the grievance shall be considered withdrawn. Determination of time frame violation issues shall take precedence over consideration of any other issue, and, if upheld, no further determination shall be appropriate.

F. **Extension of Time Frames.** It is understood and agreed that, at any step of the factfinding or grievance procedure, the time limits set forth may be extended by mutual agreement between the Company and the Union, in writing. Further, in the event either party, due to circumstances beyond the reasonable control of such party, does not become aware of, or is prevented from disclosing, facts or circumstances which would give rise to either a factfinding or a grievance, the time frame for pursuing such factfinding and/or grievance shall be extended as appropriate. If an Employee makes himself unavailable (other than on his regularly scheduled days off) to work his full shift on his last scheduled workday within the time frames under the fact finding procedures and paragraph H of this article, the Company may issue the notice/letter to the Employee upon his first full day returned to work.

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:

1. No Suspension. In circumstances where no suspension is imposed:
 - a. The Employee shall be advised, in writing, with a copy to the local representative of the Union, of the nature of the factfinding not later than ten (10) calendar days from the time the Company becomes aware of the incident concerning which the factfinding shall be convened.
 - b. The factfinding shall be held within five (5) calendar days from the date such notice is given to the Employee and the local representative of the

Union, and

- c. The Company shall render its decision (inclusive of any discipline), in writing to the Employee, within five (5) working days after completion of the factfinding, and a copy of the decision shall be delivered to the local representative of the Union.

2. **Suspension.** Notwithstanding the foregoing, the Company may suspend a covered Employee pending a factfinding and/or until such time as the decision of the Company resulting from the factfinding is rendered, subject to the following conditions:

- a. The suspension shall be a paid suspension;
- b. The basis for the suspension shall be reduced to writing and presented to the Employee and the local representative of the Union within two (2) working days of the suspension;
- c. The factfinding shall be held within three (3) working days of the presentation of the written notice of the basis for suspension; and
- d. The Company shall render its decision (inclusive of any discipline), in writing to the Employee, within five (5) working days after completion of the factfinding, and a copy of the decision shall be delivered to the local representative of the Union.

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- c. The factfinding shall be held within three (3)

working days of the presentation of the written notice of the basis for suspension; and

- d. The Company shall render its decision (inclusive of any discipline), in writing to the Employee within five (5) working days after the completion of the factfinding, and a copy of the decision shall be delivered to the local representative of the Union.

H. **Other Disciplinary Procedures.** Letters of warning or reprimand not involving loss of pay or discharge shall be issued no later than five (5) working days from the time the Company has full knowledge of the incident.

I. **Retention.** All letters of reprimand or warning shall be removed from an Employee's file after twelve (12) months have elapsed from the date of such letter.

J. **Administrative Discharge.**

1. The Company will notify, in writing, any Employee failing to return to duty from a thirty-six (36) months leave of absence, that he is deemed to have resigned his employment and forfeited all seniority rights.

2. Any Employee who is absent without calling in for three (3) consecutive days shall be terminated without the benefit of a factfinding. The Employee shall be considered unavailable and shall be notified of his termination by certified mail, return receipt requested, to the Employee's last known address on file, with a copy to the Union. The Employee shall be deemed to have received such notice three (3) working days after such notice is sent.

K. **Representative Grievance Investigations.** Local Representatives shall be permitted, after reporting to local management, a reasonable amount of time during working hours to investigate or present grievances, provided that work assignments shall have priority. Union representatives shall not suffer a loss of pay as a result of investigating or presenting grievances at the representative's home station. The Union shall compensate representatives for time spent at stations other than the representative's home station.

L. **Interpretation/Application of Agreement.** In the event of a

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

...

* * *

14. Arbitration/Function and Jurisdiction. The functions and jurisdiction of the Arbitrator shall be as fixed and limited by this Agreement. He shall have no power to change, add to, or delete its terms. He shall have jurisdiction only to determine issues involving the interpretation or application of this Agreement, and any matter coming before the Arbitrator which is not within his jurisdiction shall be returned to the parties without decision or recommendation. In the event any disciplinary action taken by the Company is made the subject of proceedings, the Arbitrator's authority shall, in addition to the limitations set forth herein, be limited to the determination of the question of whether the Employee(s) involved were disciplined for just cause. If the Arbitrator finds that the penalty assessed by the Company was arbitrary or unreasonable, he may modify or remove that penalty.

CONTENTIONS OF THE PARTIES

The Company's Contentions

The Company contends that it has established that the Grievant committed multiple violations of the provisioning manual. First, he failed to properly visually check the porthole. Then, he omitted the most important safety step, ensuring that the girt bar was disengaged before opening the door. If he had looked, he would not have forcefully pulled the galley service door multiple times because he would have seen that the slide was still engaged.

The Company contends that the claim of Union witnesses that they cannot prevent slides from deploying is a falsehood, easily debunked by common sense and the provisioning manual. A slide deploying is dangerous to the Provo agent and no rational person would guess, day in day out, whether it would occur. Nor with the Company develop an impossible basic safety feature.

The Company has established that the Grievant had multiple training opportunities that included proper galley service door procedures. This was also true for the other Union witnesses. These procedures have been in place for many years and remained consistent. The fact that slide deployments are very rare among the thousands of flights that occur each day show that injuries are being avoided because Section 2.1.8 is being followed closely. It is not necessary to open a galley service door to a great degree in order to see the girt bar. The Company's pictures demonstrate that the girt bar clips can be seen from the platform, feet away from the door. In the normal course, a Provo agent can quite easily see, when the door is cracked, whether or not the clip has a girt bar inside of it or not.

The Company contends that discipline has been issued for these types of violations. Three examples, including a letter of termination, letter of warning, and final letter of warning with 10 disciplinary days off, were introduced to support the Company's approach. The purpose of discipline is to change behavior and the Grievant acknowledged that his behavior has changed. The Company is not "out to get" the Grievant and cares about his safety. By all accounts the Grievant is a good man. The letter of warning with three unserved days off falls within the reasonable range for discipline.

The Company contends that it has more than met his burden of proving that the Grievant committed multiple safety violations and received appropriate discipline. For the above reasons, the Company requests that the grievance be denied.

The Union's Contentions

The Union contends that the Company disciplined the Grievant for "partial deployment." However, as clearly seen in the training video, when a slide deploys, it fully deploys and cannot be stopped. In this instance the slide dropped out of the cradle, but did not deploy.

The Union notes that after the slide fully deployed in Denver, it took the Company more than one year to put a memo out, addressing what they say was 80 events. Despite these 80 events, the Company only introduced three letters of discipline. The third was never grieved because the agent chose not to.

The Union contends that if the Company truly believed the Grievant was at fault for a serious safety violation he would have been removed immediately. Instead, he finished his shift provisioning aircraft. On September 1 the Grievant made a quick writeup to give to his supervisors, as soon as possible. The fact that he did not put in that write up, specifically, that he looked at the girt bar is meaningless.

The Union contends that, as shown in the video, the Grievant stopped moving the door the very moment he saw the girt bar, put his hands up, and walked away. The Company has not proven that he saw it and continued opening the door. If he had not been looking for the girt bar, in compliance with the manual, he would have swung the door open and the slide would have come out. The Grievant knows that his life is at risk if the slide deploys.

The Union contends that the Company presented no evidence that the Grievant was taken to an aircraft and shown how to look at the slide, as part of his training. Numerous senior agents testified that there was not hands-on training. Further, they were not shown the video of the slide deploying. Agents are required to visually make sure the girt bar is disengaged, but the instructions do not say how. The picture shows the door 35 to 40% open, not 6 inches.

For the above reasons, the Union asks that the grievance be awarded in full.

ISSUE

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

FINDINGS

Both parties presented extensive testimony regarding the amount and type of training Provo agents receive with respect to opening galley service doors. Given that the Provo agents are most at risk showed a slide deploy, it certainly is in their interest to exercise appropriate caution, regardless of how they are trained.

The total evidence soundly establishes that the importance of making sure that the girt bar is disengaged before the galley service door is opened is stressed by the Company in both the initial training and recurrent training given to Provo agents. However, the Company introduced no evidence setting forth that specific directions are given to Provo agents with respect to how far these doors may be opened, either in terms of inches or degrees, in order to fulfill their responsibility to perform “a visual check on the girt bar.”

The evidence also establishes that the degree to which a door is cracked by the flight attendant varies. In the photographs introduced by the Company as Company Exhibit 18, the door appears to be open 10 to 12 inches, such that it is recessed and the girt bar clips are visible. When a door is only slightly cracked, however, it would be necessary for the Provo agent to pull on the door in order to visually check the girt bar.

Section 2.1.8 of the Provisioning Manual shows, in Figure 2.5, the agent looking through the porthole. The crack in the door is barely visible, and certainly less than that shown in Company Exhibit 18. Figure 2.6 shows the agent, with both hands on the door, pushing the door in further. Figure 2.7 shows the agent, with the door open far enough that he can reach inside with his left hand, looking down at the girt bar. These Figures refute the Company’s photographic evidence that the girt bar is visible when approaching the door from the front. That may be true, on occasion, when the flight attendant cracks the door to a greater degree. However, as Figure 2.6 illustrates, the procedure contained in the Provisioning Manual requires the Provo agent to actually move the door before looking at the girt bar. In addition, the Union offered persuasive testimony that the casing may protrude making it difficult to see the girt bar and clips.

The video of the September 1 incident is not as clear as the photographs contained in Company Exhibit 18 or the figures in the Provisioning Manual. However, the Grievant does appear to look down, albeit briefly, while he moves the door. The fact that he pulled on the door four times does not mean that he failed to visually check the girt bar. The doors are heavy and the hydraulic systems sometimes mean that the agent must exert more force than other times to get the door to move. Further, the fact that the Grievant stopped pulling the door before the slide deployed indicates that he was paying attention.

On this evidence, the Company has not established that the Grievant violated Section 2.1.8 of the Provisioning Manual by failing to perform a visual check to confirm that the girt bar was not engaged.

The Company based this discipline, in part, upon the Grievant's alleged failure to properly visually check to ensure that the red flag had been removed from the porthole. First, it must be noted that, in fact, the flag had been removed from the porthole by the flight attendant. The Grievant credibly testified that he had a clear view of the porthole as he raised the box and walked toward the aircraft. Other than Figure 2.5, contained in Section 2.1.8 of the Provisioning Manual, the Company offered no evidence that employees are required to put their face against the porthole in order to look for the flag. The requirement is to "ensure the red flag has been removed from the porthole." Here, the Grievant did so.

The Letter of Warning issued to Agent A in 2011 noted that Agent A "acknowledged that the aircraft door was not cracked and that he could not see if the flag was across the window." He attempted to open the door anyway. (CX 12.) That behavior is in no way comparable to what occurred here. In 2014 Agent B was issued a Final Letter of Warning and suspension after the Company concluded that he "opened a galley service door while the slide bar was engaged causing the slide to come out." He previously had been issued a Letter of Warning for Safety. (CX 19.) The Grievant has no record discipline in his file and a performance appraisal indicating satisfactory performance for safety. In 2015 Agent Z was terminated for failing to perform multiple safety procedures including failure to perform brake checks, wear a safety vest and check the portal window. (CX 8.) The Grievant did none of these things.

For the above reasons, the Company has not established just cause for issuing discipline to the Grievant. Therefore, the grievance will be sustained. In accordance with Article Twenty, Section One, Paragraph C, the costs of the arbitration shall be borne by the Company.

AWARD

The grievance is sustained. All references to the discipline will be removed from the Grievant's file. In accordance with Article Twenty, Section One, Paragraph C, the costs of the arbitration shall be borne by the Company.

A handwritten signature in cursive script, reading "Elizabeth Neumeier", is written over a horizontal line.

Elizabeth Neumeier, Arbitrator

May 18, 2016