

American Arbitration Association

VOLUNTARY LABOR ARBITRATION TRIBUNAL

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In the Matter of the Arbitration between

Transport Workers Union of America, Local 555

and

Southwest Airlines Company

CASE NUMBER: AAA Case 71 300 00026 97

AWARD OF ARBITRATOR

THE UNDERSIGNED ARBITRATOR(S), having been designated in accordance with the arbitration agreement entered into by the above-named Parties, and dated March 13, 1997 and having been duly sworn and having duly heard the proofs and allegations of the Parties, AWARDS as follows:

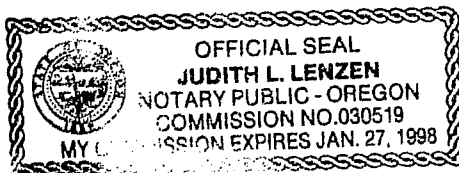
1. The Company's method of paying overtime in this case was correct.
2. The grievance is denied.
3. In accordance with Article 20, Section One, subparagraph C, the Union is designated as the losing party. As such, it is responsible for the cost of the arbitrator's fees and expenses.

John H. Abernathy
Arbitrator's signature (dated)

STATE OF Oregon }
COUNTY OF Washington } ss.:

On this 29th day of August, 1997, before me personally came and appeared John H. Abernathy

to me known and known to me to be the individual(s) described in and who executed the foregoing instrument and he acknowledged to me that he executed the same.



Judith L. Lenzen
Judith L. Lenzen, Notary Public
My Commission Expires January 27, 1998

IN THE MATTER OF THE ARBITRATION)	ARBITRATOR'S
)	
BETWEEN)	OPINION
)	
TRANSPORT WORKERS UNION OF)	AND
AMERICA, LOCAL 555)	
)	AWARD
"TWU" OR "THE UNION")	
)	
AND)	
)	Agent X Contract
SOUTHWEST AIRLINES COMPANY)	Interpretation Case
)	IND-0/0289/96
"SWA" OR "THE COMPANY")	AAA Case 71 300 00026 97

HEARING SITE: Southwest Airlines Company
2702 Love Field Drive
Dallas, Texas

HEARING DATE: August 15, 1997

ARBITRATOR: John H. Abernathy
215 Tolman Creek Road, #4
Ashland, Oregon 97520

APPEARING FOR THE UNION:
Edward B. Cloutman, III, Attorney

APPEARING FOR THE COMPANY:
Ruth Landau, Chief Counsel for Labor Relations

EXHIBITS

Joint

1. 1995-1999 Collective Bargaining Agreement
2. Escerpt from the 1995-1999 Collective Bargaining Agreement
3. Work Rules Interpretations of Article 6
4. Work Rules Interpretations of Article 7

Union

1. Settlement of a grievance filed by San Antonio Ramp Agent [REDACTED], August 20, 1991

Company

1. Pre-hearing submission

BACKGROUND

Southwest Airlines (SWA or the Company) and Transport Workers Union Local 555 (TWU or the Union) are parties to a 1995-1999 collective bargaining agreement (CBA) (Joint Exhibit 1) that governs the erms and conditions of employment for ramp and provisioning agents. Article Twenty of that agreement sets forth a procedure for the filing of grievances and to the System Board of Adjustment. If the System Board deadlocks, the grievance can be appealed to arbitration. Agent [REDACTED] requested double time pay for the three (3) hours she was extended. The Company denied her request. She grieved. The Company denied her grievance. The System Board deadlocked and the Union appealed that grievance to arbitration. The parties selected me to serve as arbitrator.

At the arbitration hearing held at the Company's headquarters in Dallas, Texas, Edward B. Cloutman, III, attorney and counselor at law represented the Union and the grievant and Chief Counsel for Labor Relations Ruth Landau represented the Company. The parties were given an opportunity to make opening statements, examine and cross examine sworn witnesses and present documentary evidence. Upon completion of closing oral arguments this case stood fully submitted.

RELEVANT CONTRACT LANGUAGE

ARTICLE 20
GRIEVANCE/SYSTEM BOARD/ARBITRATION

SECTION ONE -- PROCEDURES

* * * * *

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

* * * * *

I. Interpretation/Application of Agreement.

* * * * *

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 applicatoin of this Agreement, and any matter coming before the Arbitrator which is not within his jurisdiciton 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.

* * * * *

ARTICLE SIX

SECTION ONE -- HOURS OF SERVICE

* * * * *

J. Shift-trades. The trading of a work shift or day off between Employees within the same classification shall be permitted if a request in writing, signed by all of the trading Employees, is submitted to the appropriate station management at least twelve (12) hours in advance of the starting time of the first intended trade, provided the Employees involved are capable, current, and qualified for performing the job functions traded. Requests submitted less than twelve (12) hours prior to the first intended trade are subject to management approval. Employees who trade become responsible to work the shift agreed to as if it were part of their regular shift assignment. No trade can involve more than four (4) persons. Trades involving probationary Employees in their first thirty (30) days of service are subject to Company approval.

* * * * *

ARTICLE SEVEN -- OVERTIME

A. Computation. For pay purposes, the overtime rate of time and one-half shall be computed on an actual minute basis adjusted to the nearest tenth (1/10) of an hour, with a minimum of three quarters (3/4) hour overtime. If an Employee elects to waive the requirements for the minimum three quarters (3/4) hour overtime, he may do so if approval is obtained from a supervisor. For the purpose of this Article only, it is expressly understood and agreed that a part-time Employee's seniority shall be the date he was placed in the classification in which he is working.

B. Time and One-half. Employees shall be paid an hourly rate of time and one-half for:

1. First 4 Hours. The first four (4) hours worked either prior to or after an Employee's regular shift.

2. First 8 Hours. The first eight (8) hours worked on one of the two regularly scheduled days off.

C. Double-time. Employees shall be paid an hourly rate of double time for:

1. Excess of 8 Hours Overtime. All hours in excess of the first eight (8) hours worked on one of the two regularly scheduled days off each work week.

2. Second Scheduled Day Off. For all time worked on the second regularly scheduled day off in a work week, if a minimum of four (4) hours overtime on the first day off was also worked.

3. Excess of 12 Hours. For all time worked in excess of twelve (12) hours in any work day.

* * * * *

G. Continuous With Overtime. If a known overtime assignment of less than four (4) hours is available, it shall be filled by continuous with overtime (shift extension) as follows:

* * * * *

I. Overtime Call Book. If a known overtime assignment of four (4) hours or more is available, the overtime call book for each classification shall be utilized. To be eligible for this overtime, an Employee must sign the overtime call book in ink and initial, in ink, any subsequent deletion or changes of preference(s). All such changes must be witnessed and initialed by a supervisor. A standard overtime call book shall be used at all stations and offices. Overtime call books shall be posted for a minimum of fourteen (14) days in advance. When an Employee signs the overtime call book, it shall constitute his agreement to work on the day for which he signed, and normal attendance rules shall apply.

NATURE OF THE DISPUTE

This case presents a situation where the facts encountered by a single employee are driving a contract interpretation dispute. The facts are not in dispute.

On October 3, 1996, the grievant worked her regular shift which ran from 0615 (6:15 a.m.) to 1445 hours (2:45 p.m.). She had arranged a shift trade with another agent for a partial shift to begin at 1445 and run until 1930. She worked that shift change and was properly paid straight time pay for that partial shift trade.¹

At 1930 hours the Company extended her shift (an allowable practice) for 3 hours, i.e. from 1930 to 2230. She was paid at the time and one-half overtime rate for the three hours she was extended.

The Union claims she should have been paid overtime at the double-time rate. The Union relies on Article Seven, Overtime, Paragraph C.3 which states:

C. Double-time. Employees shall be paid an hourly rate of double time for:

3. Excess of 12 Hours. For all time worked in excess of twelve (12) hours in any work day.

The grievant worked 15.7 hours on the day in question and therefore is entitled, the Union claims, to be paid double time for the last three hours.²

The Company contends the grievant was properly paid at the time and one-half rate for the 3-hour extension. The Company argues that Article Six, J-3 controls ("No overtime shall be created by a shift trade..."). The Company contends that the

¹See Article 6, Section One, Hours of Service, Paragraph J, Shift Trades, subparagraph 3 Overtime Exclusion. "No overtime shall be created by a shift trade..."

²The Union does not seek double time for the .7 hours.

Union's over-12 hours argument could also apply to the 0.7 hours the grievant worked at the end of her shift trade. The Company also contends that it has never paid the double time rates in scenarios as found here. Finally, the Company argued that a ruling for the grievant in this case would give other employees the opening to arrange shift trade in a way to force payment of overtime at the double time rate. Not only would this be expensive, it could be very expensive and it would seriously hamper the Company's ability to control overtime costs.

The Union claims that the Company's argument to pay San Antonio Ramp Agent [REDACTED] overtime at the double time rate for all hours worked in excess of 12 hours on that day constitutes a precedent that should be followed. The Company argued that the [REDACTED] case involved different facts. [REDACTED] worked 8 hours of voluntary overtime on his day off for which he was paid overtime at time and a half. He then worked a shift trade of 7.7 hours (at the straight time rate) and 0.2 hours beyond (at the double time rate). The grievance was settled on the following basis:

Effective today's date, an agent who works a shift trade on his or her regularly scheduled day off, and then works an overtime assignment, will be paid straight time for the shift trade, time and one half for the first four hours of the overtime assignment, and doubletime for all hours in excess of twelve in the day.

(Union Exhibit 1, page 1

That settlement has been made a part of the work rules interpretations for Article 7, Overtime, where in 33 the following question is posed and an answer given:

33. *If an agent works a shift trade on his regularly scheduled day off, and then works an overtime assignment, how will the agent be paid?*

Agent will be paid straight time for the shift trade, time and one half for the first four hours of the overtime assignment, and double-time for all hours in excess of twelve in any day.

(Joint Exhibit 4, page 4)

The Company contends that the grievant in the instant case was not on her day off when she worked her shift, half a trade shift and was then extended for an additional three (3) hours.

OPINION

The Union and the Company rely on different provisions of the collective bargaining agreement. The contract language relied upon by the Union and by the Company is not unclear or ambiguous as written. To the contrary, both provisions are clear. The difficulty here is these two provisions appear, at first reading, to be contradictory. Assuming, for the sake of argument, that these provisions are contradictory, for the Union to prevail, it would be necessary for the Union to demonstrate that the contract provision on which the Union relies should be given superior weight so as to prevail over the provision relied upon by the Company. Another way of saying that would be to say that the passage the Company relies upon should be given lesser

weight -- or should be subservient to the Union's provision. The Union could meet this burden either by showing that was the intent of the parties or by showing that is the way these contradictory provisions were applied in practice, or by showing such a weighting can be determined from the contract either because of direct language or inferred from other language.

There is no evidence in the record that the intent of the parties was to interpret these conflicting passages as urged by the Union. Thus I conclude the Union failed to prove intent.

The Union did not address past practice. However, the Company offered unrebutted testimony that there was no past practice to pay overtime at the double time rate in scenarios as found here. The Company presented unrebutted evidence that the practice was to pay as the Company did here. Therefore, I conclude that the Union failed to prove past practice supported its position but the Company proved that past practice supported its position.

Nor did the Union prove that the contract contained another provision that supports the Union's interpretation or that support of the Union's position can be inferred from the labor agreement. In fact, the contract reveals that the Company's interpretation of Article Six, Section One, Hours of Service, paragraph J contains the following sentence regarding shift trades:

Employees who trade (shifts) become responsible to work the shift agreed to as if it were part of their regular shift assignment. (Emphasis added)

The parties agree that employees who trade shifts are paid at their straight time rate. The example in the labor agreement in J-2 makes it clear that the employee who works an 8-hour trade shift gets straight time pay for those 8 hours even though that employee may have worked his/her regular shift before working the trade shift. Working a regular 8 hours followed by trade shift hours means a 16 hour day. That employee is working over 12 hours but is paid straight time for those 16 hours. The agreement specifically states that "no overtime shall be created by a shift trade." Thus stacking a trade shift of more than 4 hours (but less than 8) on top of an employee's regular 8-hour shift does not negate this specific contract language. Nor does the fact pattern of this case change this general principle, in my opinion. The grievant worked her regular 8 hour shift, then worked a 4.7 our trade shift. According to the Union's logic she should have been paid double time for the 0.7 hours beyond 12 hours, but the Union made it clear that it was not claiming double time for that 0.7 hour beyond 12. In my opinion, the Union's failure to request double time for that 0.7 hour weakens the logic of its position. When the grievant accepted the trade shift for half day, she agreed to work it as if it were part of her regular shift assignment at the straight time rate. The

extension of her "regular shift assignment" was for 3 hours for which she was paid at time and one half.

I find no proven contract violation. Therefore, I shall enter an award denying the grievance.