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IN THE MATTER OF ARBITRATION **OPINION AND AWARD**

between

SOUTHWEST AIRLINES **Case No. ONT-0-0241/12**
(Vacation – [redacted])

and

TRANSPORT WORKERS UNION
LOCAL 555

****

APPEARANCES:

On Behalf of the Company: Christina Bennett, Senior Attorney – Southwest Airlines

On Behalf of the Union: Kevin Carney, District VI Representative – Local 555

I. ISSUE

The Parties stipulated the issue presented by the grievance before the Board should be framed as follows:

> "Did the Company breach the Collective Bargaining Agreement ("CBA") by discontinuing vacation accrual for the grievant after she was on medical leave for 180 days, and if so, what is the appropriate remedy?"

II. RELEVANT CONTRAC T LANGUAGE

CBA – Article Two

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

CBA – Article Eight

A. **Company Seniority.** Company seniority shall be defined as an employee's continuous length of service with the Company and shall determine length of vacation, if any.

ARTICLE TWELVE
LEAVES OF ABSENCE

C. Approved Leaves of Absence

2. Medical Leave of absence (including maternity)
Leave of absence will be granted on account of sickness, non-occupational injury or pregnancy upon written verification of disability from a qualified medical doctor. The Employee requiring an extension of a medical leave of absence must submit an extension request stating the period of extension requested which must be supported by a doctor's statement specifying the need for an extension. Accrued sick pay may be taken at the option of the Employee during a medical leave of absence. The Company will continue health insurance coverage to the Employee for up to one hundred twenty (120) days from the Employee's last paid day, during which time the Employee shall be responsible for paying any premium the Employee was paying while in active service. Coverage after one hundred twenty (120) days will be available under COBRA at the full applicable COBRA premium. An Employee on medical leave shall continue to accrue seniority for all purposes for one hundred eighty (180) days from the last day paid, for purposes of pay, sick leave, and vacation accrual, provided that the Employee may not take sick leave or vacation accrued during the period of the leave until after the Employee returns to active service. Thereafter, the Employee shall not accrue seniority for pay, sick leave or vacation accrual purposes. If the Employee has not returned to duty by the end of a thirty-six (36) month period, the Employee shall be automatically terminated from employment and all seniority rights forfeited. The Company reserves the right to require an examination by a doctor of the Company's choosing, at any time, at the Company's expense.

ARTICLE FOURTEEN
VACATIONS/DAT DAYS

A. **Schedule.** All employees who have been with the Company for less than one (1) year as of any January 1 during the term of this Agreement shall be entitled to a vacation in accordance with the following schedule:

Months of Service
as of January 1:

1 Month – 1 Day
2 Months – 2 Days
3 Months – 3 Days
4 Months – 4 Days
5 Months – 4 Days
6 Months – 5 Days
7 Months – 6 Days
8 Months – 7 Days
9 Months – 8 Days
10 Months – 9 Days
11 Months – 9 Days
12 Months – 10 Days

B. **Accrual.** All Employees shall receive two (2) weeks vacation beginning in the year following their first anniversary with the Company. All Employees shall receive three (3) weeks vacation beginning in the year following their fifth anniversary with the Company. All Employees shall receive four (4) weeks vacation beginning in the year following their tenth anniversary with the Company. All Employees shall receive five (5) weeks vacation beginning in the year following their eighteenth anniversary with the Company.

III. BACKGROUND AND FACTS

Grievant began her employment on June 9, 1998. In the calendar year 2005 Grievant was on a leave of absence from January 1, 2005 to November 15, 2005. For 2006, the evidence indicates that she was allowed 9 days of paid vacation. (See Company Exhibit no. 4 and testimony of [redacted] Transcript page 52).

Apart from any questions raised by a leave exceeding 180 days, an employee with her tenure would have been entitled to 120 hours (or 15 work days or three work weeks).

Grievant started another medical leave of absence November 5, 2010 that ended November 7, 2011. Apart from any questions raised by a leave of absence, an employee with her tenure would have been entitled to 160 hours (20 work days or four work weeks).

In 2012 Grievant was allowed only two weeks of vacation. She filed a grievance January 30, 2012 protesting the fact she did not receive four weeks of vacation at the District level. The grievance was stated thusly:

> "The Company is violating the clear and unambiguous language of Article Fourteen, Paragraph B of the CBA by not giving and allowing [redacted] her four weeks of accrued paid vacation. [redacted] is a 13-year employee and therefore entitled to four (4) weeks of vacation. The contract does not provide language to suspend vacation accrual for agents who are on a Medical Leave of Absence. Nor does the CBA allow the Company to prorate vacation time for agents who have been with the Company more than one year. Please award the remedy sought on the(sic) page one which is not only fair and reasonable but is what is specified by the contract."

After the grievance could not be resolved, the matter was ultimately submitted to arbitration. A hearing was held May 10, 2012. Post hearing briefs were filed (after receipt of the transcript of the proceedings) on June 26, 2012.

IV. OPINION AND DISCUSSION

The arguments of the Parties, while extensive, can be succinctly summarized. The Union contends that the contract is clear and unambiguous and provides that vacation is accrued by seniority and not hours worked. They point to the first paragraph of Article 8 that defines seniority and also says that it governs the length of an employee's vacation. Article 14, in turn, states that an employee with Grievant's seniority is affirmatively entitled to four week's vacation. There are no allowances for working a certain number of hours, or being on a leave of absence and the only proration formula is for employees with less than a year's service.

As for the Company's reliance on Article 12.C , the Union believes the superfluous language about sick leave is not relevant and is not the issue. There is no debate seniority freezes for pay purposes but the Company ignores the fact that the sentence reads, "Thereafter, the Employee shall not accrue seniority for pay, sick leave or vacation accrual purposes." As the CBA is clear that the amount of vacation time is based on seniority, this is in line with Article 8, paragraph A and Article 14, paragraph B and stands to reason.

The Union also believe this issue was already decided by the four-person System Board in 1996 when the System Board granted an employee four weeks vacation even though he was on a leave for two years prior to that. This, and

the principle that the Company cannot unilaterally establish policies that conflict with the CBA, supports the grievance.

The Company contends the Union has failed to meet its burden to show the Company breeched the contract. Rather than support the grievance, the contract confirms in the specific language of Article 12.C.2 that no vacation accrues after 180 days of a leave. This specific language must be given more weight than the general language relied on by the Union. If the Union were right, an employee would be permitted full vacation accrual based solely on date of hire with the Company while on leave for up to three years.

The Company also relies on past practice pointing to evidence that the Company has consistently applied the language of the contract (particularly Article 12.C) in a way that gives no vacation pay or earnings for time missed due to a leave of absence beyond 180 days. As for the System Board decision, it is clear to the Company that it was a one-time decision for that Grievant and that for the future the Parties were to negotiate, which is something the Union has failed to address in bargaining ever since.

It is the opinion of the Board that the Company is correct that the specific provisions of Article 12.B.2 clarify and modify the general provisions of Article 8 and 14 as they relate to the vacation earnings of an employee who has been on a medical leave for more than 180 days.

To the extent there is any ambiguity in the application of all the relevant contract provisions taken as a whole, the past practice relied on by the Employer is convincing as to what Grievant is entitled to. Moreover, the Union's interpretation ignores, if not nullifies, the language in the critical sentence about what happens when an employee is on medical leave more than 180 days. It states "thereafter, the employee shall not accrue seniority for pay, sick leave or vacation accrual purposes".

The Union agrees that an employee's accrual is suspended after 180 days for purposes of the length of a vacation, i.e. whether and when an employee jumps from (for example) three weeks to four weeks. Given this is true, it would be an odd result, especially in light of the past practice that vacation accrual would not also be suspended for the purpose of pay eligibility within their vacation category from one year to the next.

While there is no proration language of vacation time or pay in the CBA, it is a logical consequence or extension of the contract language. The practice may have even predated the CBA and is entirely consistent with Article 12.

The only exception in the record to the vacation earnings practice is the [redacted] System Board decision relied on by the Union. It, however, cannot in these circumstances be elevated to the level of controlling or modifying the language of Article 12.B.2 for all cases that followed it. The language of the

decision said as much when it recommended the Parties meet for future cases and that the decision was based on the evidence in that particular case.

The fact is the practice relied on by the Company continued for many years after the [redacted] decision without any effort to enforce it as controlling in all cases.

The practice is quite convincing as it relates to un-credited months toward vacation pay in the following year beyond the end of an 180-day medical leave.

The Union's contention that the year-to-year vacation pay of an employee is in lockstep with the length category any employee finds herself or himself under Article 14.B regardless of how much they might work in a year is inconsistent with (1) the specific language of the contract, (2) the practice as to accruals while on medical leave toward the length of vacations, and (3) the practice of how much vacation pay an employee gets in any one year.

Indeed, the key to applying the various provisions might even be in the word "pay" in the critical sentence rather than "vacation accrual". Vacation really has two separate components. One relates to the maximum length one can earn and the other relates to how much one earns or gets paid for. The term "vacation accrual" in Article 12.B.2 could be thought to relate to the advancement toward the next length category (which the Union agrees is suspended by a medical leave in excess

of 180 days). The 'pay' part of vacation could be treated under the pay provisions. In either event, the Company's practice is supported by the language.

In view of the foregoing, the grievance is without support in the contract and cannot be sustained.

AWARD

The grievance is denied.

(SIGNATURE WILL BE IN PRINT COPIES)

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Gil Vernon
Arbitrator

Dated this ___ day of August 2012.