ARBITRATOR'S OPINION AND AWARD

In the Matter of Arbitration Between:

December 20, 2014

SOUTHWEST AIRLINES COMPANY

and

TRANSPORT WORKERS UNION OF AMERICA, AFL-CIO
Local 555

Grievance: SMF-O-0200/14 [redacted]

Before

Elizabeth Neumeier, Arbitrator

Representing:

The Company: Samantha Martinez, Muskat, Martinez & Mahoney, L.L.P.

The Union: Kevin Carney, District IV Representative, TWU, Local 555

Statement of the Award: The Company did not violate time frames. In accordance with Article Twenty, Section One, Paragraph C, the costs of the arbitration shall be borne by the Union.

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. The CBA, in Article Twenty - Grievance/System Board/Arbitration - Discharge and Discipline, Section One - Procedures contains a number of provisions governing how grievances are processed. The Subparagraph E - Time Frames provision states 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." In this case there is a dispute as to whether the Company complied with the time frames for notifying the Grievant of the nature of the factfinding. If so, the CBA specifies the remedy.

The fact-finding procedures in subparagraph G of Article Twenty, Section One require in circumstances where, as here, no suspension is imposed that 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."

The basic facts giving rise to this time frames dispute are essentially undisputed and the parties stipulated to a chronology of events. That chronology has been supplemented here by additional facts, *in italics*, established at the arbitration hearing.

2013

11/27 Alleged incident *[in Sacramento (SMF)]* between Grievant [redacted] and Flight Attendant [redacted]

11/28 [redacted] electronically submits a SOPI/IR[1] *[at 03:17 A.M. At 10:02 A.M. Inflight SMF base administrator Erika Adams accessed the IR and acknowledged receipt.]* [UX 1]

[12/2 Inflight Base Manager Suzanne L. Stephensen escalated the IR to HDQ without further action involving the base supervisor.]

[12/03 Erika Adams transferred the IR to Inflight Standards HDQ at 12:40 PM.]

[12/4 Donna Whitehead, Inflight Standards Manager at HDQ

[1]Arbitrator's note. This refers to IR # 189437, submitted by [redacted] on November 28, 2013 at 03:17:35 AM regarding an event in SMF on November 27, 2013. The report characterize the "Event Type" as Crew/Employee Issues - Misconduct. (UX 1.) SOPI is an acronym for Southwest Operating Irregularities, an electronic reporting system that has been in place since 2006. SOPI and irregularity report (IR) are used interchangeably.

reviewed the IR. Morgan Braun, Inflight HDQ Admin filed the IR.]

12/12 Inflight Dept. (Morgan Braun) *[electronically]* forwards IR to Ground Operations HDQ (Regional Director Bill Showalter, *[and HDQ Admin Employees]* Misty Rogers, Stephanie Dybas), requesting response from Ground Ops *[No explanation for gap in time between 12/4 and 12/12.]*

12/16 Rogers forwards IR to SMF station management, (David LaPlante, Pedro Teixeira, Bob Churchill, *[Sacramento Manager of Ramp Operations]* Shawn Englehart), requesting response

12/17 Englehart issues notice of a fact-finding meeting to Grievant for 12/18

12/18 Fact finding occurs

12/23 Englehart issues Grievant a Letter of Instruction (LOI) [JX 3.]

The grievance at issue here, filed on January 1, 2014, protests that "I received a letter of instruction unjust on 12/23/13."[2] After the grievance was denied by management, the System Board deadlocked and the Union pursued arbitration.

The Union offered testimony from [redacted], the Union Station Representative who attended the fact-finding meeting on December 18 and filed the grievance, Grievant [redacted], and Local Union President Chuck Cerf, who participated in negotiations in 1995, 2001 and 2009.

The Company offered testimony from Manager of Inflight Standards (now called Cabin Services) Tom Raffalski, Sacramento Manager of Ramp and Operations Shawn Englhart, who conducted the factfinding, now-retired Secretary to the Vice President – Ground Ops Ruth Ann Chancellor, and Director of Labor Relations Bill Venckus.

Station Representative [redacted] testified that he attended the December 18 fact-finding meeting at which MRO Englehart provided the SOPI he had received on December 16. Englehart did not have any videos or other documents but wanted to hear the Grievant's side. When Landeros pointed out that the dates showed the factfinding was out of time frames, Shawn replied that he understood but said that he just received the SOPI the other day. It had gone from Inflight Services, to the Director, to the Station Manager, and then to him. [redacted] noted that Inflight Services was part of the Company and he was never asked about extending the time

[2]All dates refer to 2013 unless otherwise specified.

frames. The Company called no other witnesses to the factfinding. On cross examination [redacted] said that the Company "becomes aware" when the person who has been sent the email receives it. In this case the time frames started on November 29, 2013, due to the Thanksgiving holiday. He acknowledged that the recipient needed to be a Manager, but emphasized it could be any Manager. In this case the SOPI went to an Inflight Manager, not to an Operations Manager. He further acknowledged that under Article 20, Section F an Inflight Supervisor could not reach an agreement with the Union to extend time frames, nor, under Section G-1-c, could an Inflight Supervisor issue discipline to a covered employee. He agreed that no one outside the Ground Ops chain of command can suspend a covered employee. However, he insisted that the reference to the Company having full knowledge is not restricted. His past dealings with SOPIs have only involved ramp operations or cargo provisioning, and all employees were covered by this CBA.

Grievant [redacted] testified that prior to the factfinding no one had asked her about this incident.

Sacramento Manager of Ramp and Operations Shawn Englhart testified that he first learned of this incident on December 16 when he received an email from his Director, Bill Showalter, or his Admin, with the IR attached to it. He questioned Stephanie Dybas, an Inflight Admin in HDQ, about the delay in the report getting to him and was told that it takes quite a while to get these irregularities to Ground Ops. He then scheduled and conducted the December 18 fact-finding meeting discussed above. When Steward [redacted] raised time frames and said Grievant [redacted] would not be speaking, he told them he would make his decision off of what the Flight Attendant had to say.

The pertinent language from all predecessor contracts was entered into evidence and testimony regarding bargaining history, summarized below, was offered by both parties. Commencing in 1976 the Company entered into agreements with the International Association of Machinists (IAM) as the collective bargaining representative of the covered employees. The 1976-79; 1979-82; 1981-84; and 1984-89 agreements each contained nearly-identical language reading as follows:

ARTICLE XVIII[3]

GRIEVANCE PROCEDURE

* * *

1. The representation for the effective handling of grievances between the parties under this Agreement shall be:

a. The Union will be represented by properly designated steward at each location who will be empowered to settle all local

[3]In the 1981-1984 agreement and thereafter the Grievance Procedure appears in Article XX.

grievances.

b. The Company will be represented by an authorized representative at each location who will be empowered to settle all local grievances not involving changes in Company policy.

* * *

2. For the presentation and adjustment of grievances that may arise, the procedure will be:

a. Any employee, or employees, having a grievance in connection with the terms of this Agreement or working conditions, will present the grievance to his Union representative in writing within ten (10) days from the time the grievance occurred, who in turn will discuss the matter with the Company representative and endeavor to arrive at a satisfactory adjustment of the case. The Company representative will give his decision in writing within three (3) days.[4]

* * *

3. No employee who has passed his probationary period will be disciplined to the extent of loss of pay or discharge without being advised in writing within 24 hours of the charge, or charges, preferred against him leading to such action. Letter of Warning or Reprimand not involving loss of pay or discharge will be issued no later than ten (10) days from the time the Company has knowledge of the incident.[5]

* * *

6. All time limits set forth in this Article shall refer to work days rather than calendar days – Saturday, Sunday, and recognized holidays being excluded. [CXs 3, 4, 5 and 6.]

Company witness Ruth Ann Chancellor worked for the Company from 1978 through 2010 in a variety of positions in which she was responsible for contract and policy administration, complaint procedures, negotiations and contract administration, budgeting and more. She performed these duties when the IAM represented the Ground Ops work group, when they formed their own association in the early 1980s, and when TWU commenced representing

[4]In the 1981-1984 Agreement these time frames were adjusted to give both the employee and the Company seven (7) days.

[5] This paragraph appears as paragraph C on page 45 of the 1984-89 Agreement. [CX 6.]

this bargaining unit in the 1990s. Chancellor testified that the above-quoted language was always applied when, for Ground Ops employees, the Station Manager had knowledge of the incident. She said the time frames were never triggered by another department's knowledge. In addition, another department could not discipline a Ground Ops employee.

Chancellor further testified that, in the early days, complaints were handled through an inter-company mail system called board mail. A flight attendant would write up an IR and turn it in to their supervisor at the end of the trip. At some point, the Inflight Department would direct the IR back to Ground Ops headquarters via board mail. Ground Ops headquarters would look at it, then forward it to the location where the employee worked. The time frames were triggered when that Base Manager received it. She was not aware of any instance of the Union claiming time frames were triggered when an Inflight Supervisor received a complaint from a flight attendant or when the complaint reached Ground Ops headquarters. Initially, with only one flight attendant base in Dallas, the board mail process could take 3 to 5 days, or longer depending on who received the mail. With more flight attendant bases it got more complicated. To her knowledge such delays were never questioned.

After the IAM was de-certified, the Company entered into an agreement with its ramp, provisioning and operations agents, effective 1986-89. That agreement contains a "complaint procedure" rather than a "grievance procedure." (CX 7.) Thereafter, the Company recognized an informal employee organization, the Ramp, Operations and Provisioning Association (ROPA). The 1990-94 ROPA agreement contained the following language in Article Twenty, Section One:

> B. It is specifically understood and agreed that only employees of the Company and members of the Association who qualify under Article Two will be allowed to represent employees in the grievance process, except in the case of arbitration.
>
> * * *
>
> E. It is expressly understood and agreed that if the time frames set forth in this Article are violated by the Company, the employee will be awarded the desired settlement without precedent. Furthermore if the time frames set forth are violated by the Association, the grievance will be considered withdrawn.
>
> F. No employee who has completed his probationary period will be disciplined to the extent of loss of pay or discharge without first having the benefit of a hearing with the right to have an Association representative present. The employee will be advised in writing of the nature of the charge(s) not later than five (5) calendar days from the time the Company has full knowledge of the incident upon which the charge(s) is based. The hearing will be held within five (5) calendar days from the date of the written

> notice of the nature of the charge(s) unless the hearing date is otherwise extended by mutual agreement between the Company and the Association. Copies of the charge(s) will be presented to the employee affected and to the appropriate Association representative. Nothing as contained herein shall prevent the Company from suspending an employee pending a hearing, and such hearing shall be held within seventy-two (72) hours of the suspension. The employee will be advised of the charge(s) against him and shall be entitled to Association representation when suspended. The charge(s) will be reduced to writing and presented to the employee at the hearing. [CX 8.]

Chancellor testified that, at that time, she was a Regional Director in the Employee Resources Department with responsibility for administering the contract. She said that in stations with provisioning, the reference to the Company in paragraph F meant the provisioning manager, and for ramp employees it meant the station manager. She would have been aware of any grievance regarding this issue that went beyond the station level but knew of none.

The 1995-99 ROPA Agreement changed the Article Twenty, Section One language to read as follows:

> **B. <u>Representation Requirements.</u>** The Association 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 Association shall be selected from members of the Association who qualify under Article Two. The Local Representative for the Company shall be the Station 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.
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> * * *
>
> **E. <u>Time Frames.</u>** 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 Association, 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. <u>Extension of Time Frames.</u>** It is understood and agreed that, at any step of the fact finding or grievance procedure, the time limits

> set forth may be extended by mutual agreement between the Company and the Association, using whatever means appropriate. 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 fact finding or a grievance, the time frame for pursuing such fact finding and/or grievance shall be extended as appropriate.
>
> **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 fact finding, with the right to have an Association 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 Association, of the nature of the fact finding not later than five (5) working days from the time the Company becomes aware of the incident concerning which the fact finding shall be convened. [JX 4.]

Chancellor, who participated in the negotiations for the above-quoted agreement, testified that the new paragraph B language was to outline who would do representation: the local Association Representative and the Station Manager or designee. Chancellor explained that the intent of the parties regarding the new G-1-a language was that, when the local manager became aware of an incident, this is the time frames outlined for handling the incident. She said that it has always been local management, not anyone outside the department, who issues any kind of fact-finding notice or letter of discipline. At the time that language was negotiated the board mail process was still in effect. The 1995-1999 CBA also contained, for the first time, language regarding extension of time frames "due to circumstances beyond the reasonable control of such party." Chancellor said there were sometimes factors that local management had no knowledge of.

When TWU commenced representing this bargaining unit the first CBA, effective 2001-2006, altered the language of Article Twenty, Section One as follows:

ARTICLE TWENTY
GRIEVANCE/SYSTEM BOARD/ARBITRATION
DISCHARGE and DISCIPLINE

SECTION ONE

PROCEDURES

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.

* * *

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, 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 an 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. [JX 5.]

Chancellor further testified that the change from "station manager" to "Manager or his designee" was made because the Company started to have Departmental Managers. There could be a Station Manager and, below that manager, a Manager of Ramp and Operations. Also, a Provisioning Manager was not called a Station Manager. To avoid listing the Station Manager, the Provisioning Manager, the Assistant Manager and the Departmental Manager, they agreed to say the manager of the location where the employee is, where the problem is, or where the incident occurs. She said there was no intent to expand the definition of "the Company" in subsection G-1-a beyond local management. "The Company" consistently refers to the local manager where the employee works throughout Article Twenty. In other places, such as provisions dealing with past privileges and reasonable work rules "the Company" refers broadly to the entire company.

Local Union President Cerf testified that in the 2001 CBA the parties agreed to change the language governing time frames at the Company's request because the Company sought a period of ten (10) days to enable time to do a proper investigation. The Company justified this extension on the basis that it would benefit both the Employee and the Company, as sometimes the facts become clearer and the employee is let off the hook.

Cerf further testified that the Union agreed to the Company's request for a Side Letter of Agreement so that in cases involving allegations of "harassment, intimidation, threats, Customer complaints , or criminal activity" the period for investigation would be extended and the investigation, if required, "will be conducted in an expeditious manner." (UX 2.) He said that the parties have agreed to numerous side letters on specific issues but the Company has never approached the Union about extending the time frames when a SOPI is involved.

Regarding the SOPI in this case, Cerf testified that the SOPI was filed at 11:58 PM so the time frames began to run the next day. The same 10-day rule is applied to both parties. He noted that the flight attendants also are unionized and have a collective bargaining agreement with time frames. Their supervisors and managers are part of the Company. Regarding the chain of command, Cerf explained that ramp and provisioning are two separate departments, although they are under the same CBA. If a provisioning supervisor gave an order to a ramp agent it would have to be followed, but that would be unusual. Ordinarily, managers from provisioning do not give direction to ramp agents and ramp supervisors do not give direction to provisioning.

On cross examination, Cerf clarified that under the current ten-days language the time

frames began to run on November 29, even though that was Thanksgiving. Under the previous five working days language, a holiday such as Thanksgiving would not have counted. As to who received the SOPI, the time frame began to run when a person who represents the Company received it. A handwritten report, given to a manager or someone who usually reviews SOPIs or IRs would provide the necessary notice to commence time frames. He added that if an employee or the Union gave a grievance to the wrong person, such as giving it to another ramp agent, they could be out of time frames. Employees are told where to send these things, i.e., IRs and SOPIs, and if they are sent through proper channels the Company has notice and time frames start the next day.

On cross examination, Cerf acknowledged that extensions of time are common in Ground Ops and that Englehart could not have asked for one prior to being aware of the report. However, the Company could have requested it through someone else or gotten the report to him in a timely manner, so at any point during the ten days the Company bargained for he could have asked for an extension. Cerf said that with normal SOFIs and IRs – sent out on a regular basis – the Company is not out of time and he did not know why this one fell through the cracks.

Tom Raffalski, Manager of Inflight Standards, testified that he is responsible for the SOFI system, from a corporate perspective, to manage all IRs that come to headquarters and to maintain oversight for those reports submitted directly to bases. He explained how the system works as follows. Every employee can log into the system using their SWALife ID and file a report in their base. That report is then in a "queue" in that base. Each department functions independently and designates someone, such as a base coordinator or admin person, but not a supervisor, to login to the SOFI system and be responsible for reviewing the reports in that queue. If the report contains a specific request for action, the admin moves that report to base leadership. The assistant manager or base manager then reviews the report and determines what action is needed.

Raffalski testified that because this case involved a personnel issue it was sent to the flight attendant's LAS Base Supervisor to determine whether she wanted any additional action taken. She did, so her LAS Base Supervisor sent it back to the LAS Base number one person, who "escalated" it for headquarters review, all within the Inflight Department. At HDQ, with this type of personnel issue, the admin person reviews the IR and sends the Ground Ops Department. This IR was sent as an "FYI" to notify them this had occurred so they can use the information as they see fit, and a secondary process called "Program Out" was initiated. Program Out is used for more serious reports and takes the SOPI one step further by requesting a formal response from the Ground Ops Department regarding what action is taken. Inflight has no control over discipline of Ground Ops personnel. However, from a leadership perspective, they want to be able to report back to the flight attendant who submitted the original report.

Raffalski further testified that an average of 2,150 SOFIs were filed each month in 2014 with the Inflight Department. Of those, approximately 30 involve Ground Ops, but personnel issues are not tracked separately and only about a dozen were programmed out. He thought the time involved to process this SOPI was quite short, especially at that time of year. There are numerous SOPIs filed around the holidays.

Director of Labor Relations Bill Venckus previously held a number of positions with the Company including being assistant station manager. He was involved in negotiations for the current CBA. At the outset of those negotiations he understood references to "the Company" in subsection G (1) (a) to mean the local management team in the station. During those negotiations there was no discussion of changing that meaning. He is not aware of the Union ever taking the position that or filing a grievance asserting that Company awareness begins when a flight attendant makes a complaint to her supervisor about a Ground Ops employee.

Venckus testified that TWU filed 1600 to 1700 grievances in 2005 and will file 2500 to 2700 grievances this year. Except for a few grievances filed by the TWU general office, all grievances originate in the stations. He said the Company does not want to become so rushed that they don't create a certain fairness to the employee. They want to make sure they have the facts, to some extent, before presenting things. In this case, the "circumstances beyond the reasonable control of the party" language applies because once the IR was filed it had to be read, sent to the next person to be read, and then cross over to Ground Ops for further determination and action. He added that this is the first case he has heard of that has been grieved like this. The Company does not want a year to go by, have someone get a letter, and then have to try to remember what happened.

RELEVANT PROVISIONS OF THE COLLECTIVE BARGAINING AGREEMENT

PREAMBLE

This Agreement is made and entered into in accordance with the provisions of the Railway Labor Act, as amended, by and between Southwest Airlines Co. (hereinafter referred to as the "Company" and/or "Southwest") and the Transport Workers Union of America, AFL-CIO Local 555 (hereinafter referred to as the "Union"), representing the class and craft of Employees recognized by the Company as Ramp, Operations, Provisioning, and Freight Agents.

* * *

ARTICLE THREE
STATUS OF AGREEMENT

* * *

F. **Captions.** Any and all captions and/or titles of articles, sections, and/or paragraphs are for convenience of reference purposes only and shall neither add to nor detract from the substance of this Agreement.

* * *

ARTICLE TWENTY

GRIEVANCE/SYSTEM BOARD/ARBITRATION
DISCHARGE and DISCIPLINE

SECTION ONE
PROCEDURES

* * *

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.

* * *

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.

* * *

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 Union's Contentions

The Union contends that the Company became aware of the incident on November 28. The CBA allows the Company ten (10) days to issue the notice of fact finding, not ten (10) days for a particular member of the Company to issue the notice. As testified to by Company witness Tom Raffalski, an Admin working for the Company accessed the flight attendant's report through the Company website. She could have just as easily forwarded the report to Ground Ops. The airline industry is a seven-day a week business as demonstrated by the use of calendar day versus working day throughout Article Twenty.

The Union notes that the CBA covers the ramp, operations, freight and provisioning agents yet, under the Company's hierarchy, provisioning is in the Inflight Department, not Ground Ops. Using the Company's logic, if a provisioning agent wrote up an operations agent working at the same airport, the Provisioning Department could sit on the write-up for weeks before forwarding the information to Ground Ops, in spite of the close geographic proximity and both departments being covered by the same contract. The Company might argue that something like that would never happen, yet that is exactly what they are trying to do in this situation.

The Union contends that the Company had an opportunity to get the information to the local manager on November 28, as the Admin could have forwarded the copy directly to the Sacramento station. This did not happen. Further, the Company Inflight Manager could have forwarded the information to the Sacramento station on December 2. This did not happen. The information could have been forwarded to the Sacramento station on December 4 when the IR was filed. This did not happen. Instead, inexplicably, the report sat for eight more days. None of this was the Grievant's fault, but it did delay her fact-finding meeting. Apparently, Inflight deemed the matter so trivial that they sat on the information for nearly two weeks.

The Union argues that a delay in the fact-finding process is a detriment to the employee. The Company is forced to rely on write-ups instead of memories, which are now vague due to time and numerous other flights worked. The write-ups are done at the time. This puts the employee at a decided disadvantage and is not the intent of the time frames in the CBA.

The Union contends that this situation does not fall under the automatic time frame extension provision of paragraph F applicable for unusual circumstances. In an attempt to portray this incident as something beyond the reasonable control of the local manager to review the SOPI in a timely manner, the Company referred to the way the system works. The Company witness further testified that the systems run in parallel, but they're not interlinked. This shows that the Company knew of the incident. As there apparently is a problem on the Company's side, perhaps the Company should adjust their system to conform to the language of the CBA and not the other way around.

For a past practice to be binding on both parties, as referenced in Elkouri and Elkouri, it must be “(1) unequivocal; (2) clearly enunciated and acted upon; and (3) readily ascertainable over a reasonable period of time as a fixed and established practice accepted by both Parties.” The Union contends that the Company has failed to show either through documentation or evidence that this has ever been a practice. It is obvious that if both parties accepted this practice this case would not be in arbitration.

The Union contends that the Company is not a specific title or individual. Had the parties meant for “the Company” to mean the local manager, the authors would have used those words as was done in other portions of the same Article. The wording of the Preamble of the CBA clearly defines what “the Company” is.

The Union notes that paragraph B of Article Twenty designates representatives for the Union and the Company and empowers them to settle all local grievances without precedent. However, this case involves an issue regarding fact-finding meetings. The pertinent language is found in paragraph G-1 and word “Company” is used, not manager or his designee as in paragraph B. Elsewhere in Article Twenty the parties specified when they intended for a manager, assistant manager or Employee Resources to act.

The Union further contends that the 1999-decision issued by Arbitrator McKee does not support the Company’s position in this case. Arbitrator McKee states that, “As both parties agree, Provisioning Manger [sic] Wayne Campbell is the Station Manager referenced in Section

B of Article Twenty." The Union here agrees that paragraph B vests the power to settle local grievances with the local Representatives. However, if the intent of the parties were for paragraph G to mean the same thing, it would state that.

The Company cannot properly rely on the title of Article Twenty to support its case and transfer the meaning of paragraph B to other paragraphs. Article Three, paragraph F says that captions and titles are for ease of reference and do not add meaning to the contract.

Finally, the Union contends that the principle established by Arbitrator McKee in his 2009 decision, i.e., language means what it says, and the arbitrator is not at liberty to "change, add to or delete terms" of the CBA remains applicable. (SJC-P-0199/99.)

For the above reasons, the Union asks that the grievance be awarded in accordance with Article Twenty, paragraph E, due to the Company violating the time frames of the fact-finding procedure.

The Company's Contentions

The Company first contends that in this case, involving issues of contract interpretation, the Union bears the burden of proving that the Company violated the CBA. The Union has failed to do so under the plain language of the CBA, past practices, bargaining history, and in reference to other related provisions of the CBA. The Union's position would produce absurd results and require the Company's Inflight Department to rebuild its entire electronic reporting system.

The Company notes that the testimony of Union witnesses illustrates the untenable result that would flow from using the definition of the Company from the Preamble to interpret the time frames provisions of Article Twenty. Cerf testified that the provision must be applied with "common sense" thus narrowing "the Company" to mean to mean Managers, Supervisors, and persons who normally view IRs. Landeros, however, testified that it did not include an Admin person who regularly reviewed the IRs. The Company thus argues that it is a far stretch to read "the Company" in Article Twenty, Section One-G and assume it means a particular subset of IR reviewers and management. The provision is ambiguous and the intention of the parties must be ascertained by other means.

The Company contends that the meaning of the words "the Company" in Article Twenty only makes sense if it refers to local management. Those words must be read in relation to other provisions of the CBA and all writings that are part of the same transaction must be interpreted together. In other places, e.g., pass travel and mergers, use of the term "the Company" means the entire company.

The Company contends that an examination of the numerous references to "the Company" in Article Twenty establishes that the reference means local station management. These references include the provisions in paragraph F for extending time limits and issuing a fact-finding notice to an employee after day(s) off; in paragraph G-1-c for rendering the decision within five working days of the fact-finding; in paragraph G–2 for suspending an employee

pending fact-finding and rendering a decision; and in paragraph H for issuing other disciplinary letters no later than five working days from the Company having full knowledge of the incident. The Union's reading of use of the words "the Company" would mean any departmental supervisor, manager or person who regularly reads an IR has the authority to suspend and discipline Ground Ops employees. This approach is untenable on a practical level and would be unfair to the employees. The Union Station representative conceded that these references meant only the local station management. Union President Cerf claimed that extensions, suspensions and discipline could be issued by managers at different stations and in different departments, but could not testify to a single such instance in his 30 years with the Company. Company witnesses were clear that Ground Ops employees cannot be disciplined by personnel outside their department, regardless of rank. In addition, the Company notes that Article Twenty-B sets forth that, for purposes of grievances, "the Company" means local management.

The Company contends that past precedent supports its position. In a decision issued under the 1995-1999 agreement that contains, in material respects, identical wording in Article Twenty-G-1-a, Arbitrator William McKee held that the time frames did not begin until the local management received a copy of the report.

The Company further contends that past practice and negotiating history support the Company's interpretation. To counter Local Union President Cerf's testimony that he was unaware of time frames problems in the past, the Company presented testimony that since 1978, and under all successor agreements, time frames for incident reporting were always triggered when the local station manager became aware of the incident. There would have to be very strong and compelling reasons for an arbitrator to change the practice by which a contract provision has been interpreted over years and contracts.

In the alternative, the Company contends that it was entitled to a unilateral extension under Article Twenty-F because it was not aware of the flight attendant report due to circumstances beyond local management's control.

In conclusion, the Company contends that the Union failed to carry its burden of proving that the Company violated the CBA. The related language of the CBA, the past practice and negotiating history of the parties, and the absurd results associated with the Union's interpretation all weigh in favor of the Company's position. For the above reasons, the Company requests that the grievance be denied.

ISSUE

Did the Company violate the time frames set forth in Article Twenty of the CBA when it issued the Grievant a fact-finding notice on December 17, 2013? If so, what shall the remedy be?

FINDINGS

The Union's case as presented in this arbitration hearing rests upon its view that for purposes of Article Twenty, Section 1-G-1-a the meaning of the words "the Company" is found in the Preamble.

The approach at Southwest to handling infractions, discipline, complaints and grievances has a long history, preceding the Union's representation of this bargaining unit. It is apparent from both the language used in the current Article Twenty and the past involvement of certain current Union representatives in negotiating the 1995-1999 ROPA agreement that the language at issue was grounded in that history. This approach, over time, took into account the following elements, with the exact provisions varying in some respects from contract to contract:

1. Establishing that both sides will be represented at each location. (IAM agreement, 1976-79, CX 3.)
2. Defining who the local representatives will be, i.e., Station Manager or designee for Company. (ROPA agreement, 1995-99, JX 4.)
3. Authorizing the local representatives to settle local grievances on a non-precedent basis. (IAM agreement, 1976-79, CX 3.)
4. Establishing time frames for Company action (IAM agreement, 1976-79, CX 3) based on full Company knowledge. (ROPA agreement 1990-94, CX 8.)
5. Establishing the right of the employee to notice of charges. (IAM agreement, 1976-79, CX 3.)
6. Requiring the Union to be provided with a copy of such charges. (ROPA agreement, 1990-94, CX 8.)
7. Establishing the right of the employee to a factfinding before discipline is imposed. (ROPA agreement, 1990-94, CX 8.)
8. Establishing the right of the employee to be represented at the factfinding. (ROPA agreement, 1990-94, CX 8.)
9. Defining calendar days and working days. (IAM agreement, 1976-79, CX 3.)
10. Establishing time frames for the results of the factfinding to be provided. (ROPA agreement, 1995-99, JX 4.)
11. Establishing time frames for grievances to be filed. (IAM agreement, 1976-79, CX 3.)
12. Establishing time frames for grievances to be answered and appealed. (IAM agreement, 1976-79, CX 3.)
13. Providing for extension of time frames by agreement (ROPA agreement, 1990-94, CX 8), unilaterally due to circumstances beyond the reasonable control of a party (ROPA agreement, 1995-99, JX 4), and in writing. (TWU CBA 2001-06, JX 5.)
14. Providing for notice to an employee who is unavailable. (TWU CBA, 2001-06, JX 5.)
15. Providing for consequences if time frames are violated by either side. (ROPA agreement, 1990-94, CX 8.)

The above demonstrates that the process for handling disciplinary charges against employees was, in large part, in place before TWU Local 555 commenced representing this bargaining unit. In the first TWU-Southwest collective bargaining agreement, effective 1995-99,

the only change in the Representation Requirements paragraph was to substitute "Union" for "Association," as was done throughout Article Twenty. The reference to the Local Representative of the Company being "the Station Manager or his designee" remained the same as it had been under the prior ROPA agreement. Some other provisions, such as the definition of working day, were moved around but not substantively changed. The notable addition to the Extension of Time Frames paragraph, dealing with an employee who makes himself unavailable, is not involved in this case.

The first TWU-Southwest collective bargaining agreement did increase from five (5) working days to ten (10) calendar days the amount of time for the Company to advise the employee of the nature of the factfinding from the time the Company becomes aware of the incident. The purpose of this change, as testified to by Local Union President Cerf, was to allow the Company sufficient time to gather facts in order to sort out whether the allegation was legitimate and merited a factfinding. That approach is consistent with the extensive procedures the parties have in place to ensure that allegations of misconduct are investigated before formal charges are lodged against an employee, that the accused employee has the opportunity for a fact-finding hearing, with advance written notice of the charges and the right to Union representation, and to provide timely notice of the results of the factfinding.

No separate collective bargaining agreement covering the period from the end of ROPA's representation to the June 14, 2001 effective date of the first TWU-Southwest CBA entered in evidence. (See JX 4 and JX 5.) Nevertheless, given the consistency over many years in how disciplinary matters were handled, with some evolution in language for purposes of clarification and expansion of employee rights, it is appropriate to consider and give weight to the arbitration decision rendered by Arbitrator McKee in 1999, as well as his subsequent decision issued under the current CBA.

In Grievance No. SJC-P-0199/99 a flight attendant made an oral complaint about the grievant to the San Jose Provisioning Manager, who telephoned the base Provisioning Manager, at home on Sunday when he was off duty. The Union argued that telephone contact marked the beginning of the Company's "awareness." The flight attendant subsequently gave a written IR to her Inflight coordinator at her base. That IR was sent via board mail to the San Jose Provisioning Manager, who then issued the notice of fact-finding hearing. Arbitrator McKee found that the parties obviously intended for the time frame to begin at a time when the manager has "sufficient information and resources to marshal an investigation" and that did not occur until the San Jose base Provisioning Manager received the flight attendant's IR. Also pertinent to this case, Arbitrator McKee noted that both parties agreed that the Provisioning Manager is the station manager referenced in Section 1-B of Article Twenty and that they treated that manager as responsible for fulfilling the Section 1-G time frame requirement to arrange a fact-finding meeting.

Subsequent to that arbitration decision being issued, the parties engaged in negotiations for the 2001-06 and 2008-11 CBAs. Despite Arbitrator McKee's interpretation of Article Twenty, Section 1-G as placing on the base manager responsibility for issuing the notice fact-finding in a timely manner, based upon when that manager was aware of the incident and had

sufficient information, the Union did not offer any proposals to enlarge the meaning of "the Company" to include others with knowledge of a complaint. The testimony of Company witnesses that making such a change was never raised by the Union and that grievances were never filed on this issue was unrebutted.

Further, the Union witnesses did not dispute clear Company testimony that those same words – "the Company" – when used elsewhere in Article Twenty, such as in Section 1-F, dealing with extension of time frames, have consistently been applied to refer to the local representative of the Company. The Union witnesses acknowledged that it is local Company representatives who notify employees and the local Union representatives of and conduct factfindings, issue the results of factfindings, request and grant extensions of time for local matters, and settle local grievances under the above Article Twenty procedures. Testimony that managers in other departments or at the corporate level could request that local managers obtain extensions of time or issue discipline is insufficient to prove the Union's point that the parties intended a different meaning of "the Company" in Section 1-G-1 from how those words are used elsewhere in that same Article.

The Union here attempts to carve out a different meaning for the words "the Company" solely when used in Paragraph G-1-a by relying upon the Preamble to the CBA. The Preamble sets for that the CBA is entered in accordance with the Railway Labor Act, as amended, and states who are the parties to the CBA, i.e., the Company and the Union. The Preamble does establish an all-encompassing definition of "the Company" that establishes the interpretation of those words for the entire CBA. As discussed above, those words are used in varying ways in different provisions.

The Union is correct that the parties elsewhere in Article Twenty specified when certain members of management are to perform certain functions. In Article Twenty Section L Interpretation/Application of Agreement, the steps of the grievance procedure are step forth, with clear designation of who in management is responsible at each step. Those provisions and the designation of authority contained in them in no way undercuts the full authority granted to the local managers to, after receiving sufficient information, issue a notice of and conduct factfindings in accordance with paragraph G-1-a.

In Grievance No. DEN-R-0433/09, issued under the current CBA, the Company failed to give the Union the same notice as was given to the employee of the fact-finding meeting, as required by Article Twenty, Section One, Paragraph G-1-a. Further, the notice to the employee of her suspension was deficient in failing to specify the grounds for the suspension as required by Article Twenty, Section One, Paragraph G-2-b. Despite the Union having actual knowledge of the fact-finding meeting and the employee having actual knowledge of the grounds for her suspension, Arbitrator McKee found he was bound to strictly enforce the provisions of the CBA and sustained the grievance. The Union correctly relies upon this decision for the principle that, under Article Twenty, Section 1-L-14, the arbitrator must enforce contractual provisions as written. However, as discussed above, the Union's interpretation of the critical language of Article Twenty, Section 1-G is not supportable.

The Union also has expressed concern that an employee will be disadvantaged by a delay resulting from processing complaints through the SOPA system or otherwise being passed along to the station manager. This concern about due process may be properly addressed on a case-by-case basis, when dealing with the merits of a particular dispute. The provisions of Article Twenty, Section One, Paragraph G and Paragraph E are specific and narrowly written and do not address such allegations.

In light of this ruling there is no need to address the Company's alternative argument under Article Twenty, Section One, Paragraph F.

For the above reasons, the Union has not established that the Company violated time frames. In accordance with Article Twenty, Section One, Paragraph C, the costs of the arbitration shall be borne by the Union.

AWARD

The Company did not violate time frames. In accordance with Article Twenty, Section One, Paragraph C, the costs of the arbitration shall be borne by the Union.

Elizabeth Neumeier, Arbitrator

December 20, 2014