Arbitrator's Opinion and Award

In the Matter of Arbitration **Between** **Southwest Airlines Inc.** **("Company")** **And** **Transport Workers Union of America,** **AFL-CIO, Local 555** **("Union")**	§ § § § § § § § § § §	**Grievant:** **Case Number:** **Issue:**	**Grievant A** **SAT-O-0228/19** **Termination**

Before: **Paul Chapdelaine**
Appearances
For the Company: **Adria Jetton**
For the Union: **Brian Smith**
Location of Hearing: **Dallas, Texas**
Date of Hearing: **May 15, 2019**
Date Record Closed: **June 28, 2019**
Date of Award: **July 15, 2019**

Summary of Award

Notwithstanding the vigorous and skilled arguments advanced by the Union on the Grievant's behalf, the evidence and testimony clearly established that the Company has met its burden of proving that the *Results of Fact-Finding – Termination* letter dated January 21, 2019 was issued to the Grievant for just cause. Accordingly, the grievance is denied in its entirely. In accordance with Article 20.C of the Collective Bargaining Agreement, the cost of arbitration is assessed to the Union.

Paul Chapdelaine
Arbitrator
July 15, 2019

Issue

The issue to be decided in this case is whether the *Results of Fact-Finding – Termination* letter dated January 21, 2019 was issued to the Grievant for just cause, and if not, what should the remedy be?

Relevant Contract Provisions

Article 2
Scope of Agreement

C. **Reasonable Work Rules.** Employees covered by this Agreement shall be governed by all reasonable Company rules and regulations previously or hereafter issued by proper authority of the Company which are not in conflict with the terms and conditions of this Agreement and which have been made available to covered Employees and the Union Office prior to becoming effective.

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.

Article 20
Grievance/System Board/Arbitration Discharge and Discipline

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.

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

L. **Interpretation/Application of the Agreement.**

15. **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 the penalty assessed by the Company was arbitrary or unreasonable, he may modify or remove that penalty.

IV. APPLICABLE RULES AND POLICIES

Basic Principles of Conduct

Each Employee is expected to be familiar with and adhere to all Company policies and procedures. Any violation of each of the following will be grounds for disciplinary action. Discipline may range from a reprimand or discharge, depending on the particular violation and the circumstances.

14. Performing your job in a careless, negligent, or unsatisfactory manner.

28. Failure to comply with safety rules or regulations.

Background

The Grievant, Grievant A, was hired by the Company on May 25,1993 and at the time of the events leading to this grievance, he was assigned to work as an Airport Ramp Agent in San Antonio, TX. As such, the Grievant was responsible for accomplishing aircraft weight and balance computations, editing and approving aircraft load plans, coordinating customer boarding and deplaning, and preparing aircraft dispatch release forms. In a nutshell, the Grievant was responsible for assuring that the aircraft was properly loaded and safe to fly before dispatch.

While the Grievant was processing the passenger boarding of Flight Number 4028 on January 6, 2019, he improperly boarded an unaccompanied minor passenger. The following day, on January 7, 2019, he failed to accurately document the planned aircraft fuel load and he also failed to follow the proper safety procedures contained in the Ground Operations Manual while additional fuel was being added to the aircraft.

A fact-finding meeting was held with the Grievant on January 15, 2019 and at the conclusion of that meeting, he was withheld from service with pay pending the outcome of the Company's investigation. A Results of Fact-Finding meeting was held with the Grievant on January 21, 2019,

during which a Termination Letter dated January 21, 2019 was issued to him which states as follows:

> A fact-finding meeting was held on January 15, 2019, to discuss Dispatch Advised/pax count and manifest inaccuracy regarding flight #4028 from January 6, 2019, and a fueling error, Dispatch Advised, originating delay regarding flight #741 from January 7, 2019. Present at this meeting were you, Station Manager Tony Hinojos, Supervisor Cedric Thomas, Ramp Agent & TWU Rep A, Ramp Agent & TWU Rep B and myself.
>
> After a complete investigation into this matter, review of the testimony and documents provided at the fact-finding and through your own admittance, we have concluded that on January 6, 2019, while working flight #4028, you manually boarded Customer PNR #V9S628 in error. In addition, on January 7, 2019, while working flight #741, you failed to correctly document fuel for the aircraft and failed to follow the proper guidelines as outlined in 6.9: Fueling Operations of the Ground Operations manual. 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.
>
> Grievant A, this is not the first time we discussed concerns with you. On February 16, 2018, you received a Final Letter of Warning, on February 23, 2018, you received another Final Letter of Warning and on October 2, 2018, you received a Final Letter of Warning with 5 unpaid disciplinary days off. [1]
>
> Based on the above and as a result of your actions, your employment with Southwest Airlines is terminated effective immediately.

A timely grievance was submitted protesting issuance of the subject Termination Letter and when the parties were unable to resolve the dispute during the grievance procedure, the matter was advanced to arbitration for final and binding resolution. This Arbitrator was selected to hear the case in accordance with the provisions of Article 20, Section One, Subparagraph L.13. of the parties' Collective Bargaining Agreement ("CBA").

During the arbitration hearing conducted on May 15, 2019, both the Company and the Union presented documentary evidence and sworn testimony in support of their respective positions. The Grievant was fully and fairly represented by the Union, he was present throughout the arbitration hearing, and he testified on his own behalf. A transcript of the proceeding was taken and copies were provided to each of the parties and the Arbitrator. At the conclusion of the hearing the parties

[1] A copy of the October 2, 2018 Final Letter of Warning submitted during the arbitration hearing reflected a **3-Day** disciplinary suspension, rather than a 5-Day suspension.

agreed to submit post-hearing briefs, and upon timely receipt of said briefs, the record was closed on June 28, 2019.

Positions of the Parties

Both the Union and the Company submitted detailed, comprehensive, well-written post-hearing briefs addressing all of the issues which arose in the instant case. Their arguments concerning the issues which are summarized below, are condensed statements of the principal arguments made by the parties on the relevant points of the issues to be considered. However, they are not intended to be all-inclusive.

The Company's Position

The Company made the following assertions:

- As an operations agent, the Grievant was responsible to efficiently, safely and effectively verify the weight and balance of the aircraft, enter into the Company's computer system the passenger bags and freight placed on board the aircraft, and to assure that all of the passengers are accounted for before the aircraft departs from the gate.

- At the time of his termination, the Grievant had seven active discipline letters in his file from the previous 12-month period, including three final warning letters for incidents of unsatisfactory conduct and/or unsatisfactory job performance.

- Not only did the Grievant struggle to perform his job duties, but he also had repeated inappropriate interactions with passengers, supervisors, and other airport employees.

- The Grievant was warned multiple times that further incidents of unsatisfactory conduct or unsatisfactory job performance would result in further disciplinary action, and he was given multiple opportunities to correct his behavior. However, he failed to do so.

- Even though he had previously received a number of written warnings, on January 6, 2019, the Grievant failed to properly scan an unaccompanied minor's boarding pass.

- The following day, on January 7, 2019, the Grievant incorrectly filled out an aircraft fuel ticket for a departing flight. That error resulted in having to add fuel to the aircraft after the aircraft door had been closed with passengers and crew on board, and caused a substantial departure delay. He also failed to read the aircraft fuel level indicators after refueling to confirm that the proper amount of fuel was on board.

- In addition, on January 7, 2019, he failed to assure that the left front ("L1") door of the aircraft was open while additional fuel was being added to the aircraft, which constituted a safety infraction.

- A fact-finding meeting was held with the Grievant on January 15, 2019 concerning his incidents of unsatisfactory job performance on January 6 and January 7, and in view of his continuing unsatisfactory job performance, he was terminated.

Based on the foregoing, the Company insisted that the Grievant had been terminated for just cause and it urged that the grievance be denied in its entirety.

The Union's Position

The Union made the following assertions:

- The Grievant is a veteran of the United States Marine Corps and he has been employed with the Company for more than 25 years.

- The Grievant is proud of his many years of service with the Company.

- The Grievant has taken responsibility for his actions and he has offered no excuses for his errors over the past year.

- The stress and pressure associated with being the single parent of a daughter who suffers from a serious health condition caused the Grievant to be distracted and commit a number of errors at work over the last year.

- The Company has a responsibility to counsel employees and offer assistance and retraining to those who are having difficulties on the job.

- Two unaccompanied minors and a Law Enforcement Officer were scheduled to travel on flight #4028 on January 6, 2019. After the Grievant had already scanned the boarding pass and boarded an unaccompanied minor, another unaccompanied minor had checked in late at the main ticket counter located outside of the security area. The late check-in of another unaccompanied minor at the main ticket counter had confused the Grievant and resulted in his boarding error that day.

- On January 7, 2019, the Grievant made a simple math error in recording the aircraft fuel load on the fuel ticket; which required additional fuel to be added after the aircraft door

had been closed for departure. Although he had properly positioned the jet bridge up to the aircraft before fueling commenced, the flight attendant failed to disarm the emergency slide and crack (unlatch) the aircraft door from the inside. Thus, the Grievant could not fully open the door as required by the Company's fueling manual.

- The pilot and the flight attendant share the blame for failing to assure that the L1 door was open during the refueling operation.

- The Grievant's supervisor had come down the Jetway to the aircraft two times during the refueling operation, but he did not direct the Grievant to open the L1 door.

- The Grievant is a dedicated employee who has good attendance and comes to work as scheduled. Therefore, the penalty of termination is too severe and the Grievant deserves another chance to succeed.

Based on the foregoing, the Union insisted that the penalty of termination was too severe, and it urged that the grievance be sustained.

Discussion

Boarding Error on January 6, 2019

There was no dispute that the Grievant was assigned to work flight #4028 on January 6, 2019 and that two unaccompanied minors and a Law Enforcement Official were scheduled to fly on Flight #4028 that day. One of the unaccompanied minors was a female and the other was a male. There was also no dispute that the Grievant had made an improper entry into the Company's computer system to reflect that the unaccompanied female passenger, had boarded the aircraft and flown on Flight #4028 that day, when, in fact, she did not board the aircraft or fly on Flight #4028 that day.

Southwest Airlines Above-The-Wing Supervisor, Ruth Martinez testified that when she questioned the Grievant about the error, he had informed her that although the unaccompanied minor was reflected in the Company's computer system as having departed on Flight #4028, she had not departed on that flight and was still in the boarding area. According to Ms. Martinez, the Grievant explained to her that he had pre-boarded a Law Enforcement Officer and another unaccompanied minor on the flight and that after he had finished the remainder of the boarding process, he noticed that the computer system was still showing the Law Enforcement Officer and

an unaccompanied minor as not having been boarded. Therefore, he made a manual entry in the computer to show that they had been boarded.

Ms. Martinez testified that the Grievant had explained to her that the unaccompanied minor had been a late check-in at the main ticket counter and that the agent who had checked her in, had not called the gate to notify the Grievant of the late check-in. Thus, the Grievant had claimed to her that he had been confused about the boarding of the other unaccompanied minor and unaccompanied minor A.

According to Ms. Martinez, after the Grievant had written an Irregularity Report ("SOPI") concerning the incident, she had prepared a dispatch advise to document that the flight had departed with eight children aboard, rather than nine children, which included unaccompanied minor A, that the Grievant had incorrectly submitted.

Ms. Martinez testified that at the point the Grievant had noted that the computer listed passengers that had "not boarded", the proper procedure would have been for him to go aboard the aircraft and page those passengers and personally verify whether or not they had been boarded. In this case, the Grievant had acknowledged to her that he had not followed that procedure and had simply manually boarded them.

During his testimony, the Grievant did not dispute the testimony of Supervisor Martinez regarding his error in listing unaccompanied minor A as having boarded the flight. According to the Grievant, he had escorted the male unaccompanied minor and the Law Enforcement Officer to the aircraft and introduced them to the flight attendant. He stated that the flight attendant had taken charge of the unaccompanied minor, while the Law Enforcement Officer spoke to the Captain.

The Grievant reiterated Ms. Martinez' testimony that after confirming that the boarding process was complete, he had noticed that the computer listed two passengers who had not been boarded; one was a Law Enforcement Officer and the other was an unaccompanied minor. Since he was sure that he had already pre-boarded those two, he went back to the aircraft, confirmed where they were actually sitting, and made a manual entry in the computer to reflect they were boarded before sending the Passenger Weight and Balance form ("PWB") to the cockpit.

The Grievant stated that after he had closed the flight and left the gate area, he had received a call from a customer service agent who informed him that a female unaccompanied minor who was scheduled to depart on Flight #4028, unaccompanied minor A, was still at the gate. According to the Grievant, unaccompanied minor A had not been at the gate area at any time during the boarding process.

During his testimony, the Grievant accepted responsibility for the incident and he candidly acknowledged that he had committed an error when he did not confirm the name of the unaccompanied minor who was actually sitting on the flight when he had noted an unaccompanied minor listed on the computer system as not having been boarded.

During cross-examination, the Grievant acknowledged his responsibility to follow Company procedures to assure that the aircraft is safe to fly before dispatching a flight. In addition, he candidly acknowledged that he had failed to follow those procedures when dispatching flight #4028 on January 6, 2019. Therefore, the evidence and testimony support a finding that the Grievant had violated basic Principle of Conduct #14 when he performed his job in a careless, negligent, and unsatisfactory manner on January 6, 2019.

Fueling error on January 7, 2019

Once again, there was no dispute that the Grievant was assigned to work flight #741 on January 7, 2019 and that he had improperly entered an aircraft departure fuel load of 20,000 pounds of fuel on the fuel ticket, rather than the 22,000 pounds of fuel that was actually planned for flight #741 that day. As a consequence, the aircraft fueler had initially added an insufficient amount of fuel to the aircraft based on the incorrect fuel ticket that had been prepared by the Grievant. The Captain discovered the fueling error after the passengers and baggage had been loaded, the aircraft doors had been closed and the jet bridge had been pulled away from the aircraft. At that point, the pilot notified the Grievant that the error must be corrected prior to departure.[2]

The Grievant pulled the jet bridge back up to the aircraft, completed a new fuel ticket and called the fueler back to the aircraft to add an additional 2000 pounds of fuel to the aircraft. However, he failed to assure that the aircraft parking brake had been set and that the L1 door was open before the fueler began adding the additional fuel to the aircraft, as required by the Company's procedures. He also failed to visually check the aircraft fuel gauges after the additional fuel had been added to verify that the correct amount of fuel had been uploaded to the aircraft as also required by Company procedures.

Above-the-Wing Supervisor, Cedric Thomas testified that the Grievant had called him on the radio regarding the fuel issue with flight #741 on January 7, 2019. According to Supervisor Thomas, when he arrived at the gate, the Grievant informed him that he had shorted the aircraft 2000 pounds

[2] The aircraft fuel tickets introduced during the arbitration hearing verified that the Grievant had improperly noted a planned fuel load of 20,000 pounds, with 2,800 pounds of fuel in the center tank, rather than the required 22,000 pounds of fuel, with 4,800 pounds of fuel in the center tank. That confirmed the fuel shortage of 2,000 pounds to the planned total fuel load.

of fuel. Mr. Thomas stated that the Grievant was already filling out a corrected fuel ticket when he arrived and that after the Grievant informed him that everything was okay, Thomas had left the area to take care of the rest of the terminal operation.

During his testimony, Mr. Thomas explained that gate agents are required to enter on the fuel ticket the amount of fuel on board the aircraft upon arrival and the planned departure fuel load in order to let the fueler know how much additional fuel is needed in each aircraft fuel tank. According to Mr. Thomas, this was necessary to assure that the proper amount of fuel is on board for dispatch while maintaining the correct aircraft weight and balance; which is a critical element for dispatch. He also explained that based on the amount of planned fuel that the Grievant had entered on the fuel ticket, the aircraft had only 20,000 pounds of fuel on board, rather than the 22,000 pounds that was required.

Mr. Thomas testified that the Grievant had called him on the radio later that day and advised him that he had had to complete a dispatch advice. Mr. Thomas stated that he had gone back to the gate to discuss the issue with the Grievant, and that the Grievant had informed him that the computer had displayed an error message when the Grievant had attempted to send his aircraft weight and balance report.

While discussing the dispatch advice issue with the Grievant, Mr. Thomas determined that the Grievant had neglected to have the pilots reset the aircraft parking brake and open the L1 door prior to refueling, as required by Company procedures. He also determined that since the cabin door had not been reopened, the Grievant had failed to go back aboard the aircraft after the additional fuel had been added in order to read the cockpit fuel gauges and verbally verify with the flight deck crew the amount of fuel on board the aircraft, as required by Company procedures. In addition, he had determined that the Grievant had also failed to enter the verified and confirmed fuel on board in the Company's OTIS computer system prior to submitting his weight and balance report.

Section 6.9 of the Company's Ground Operations Manual titled *Fueling Operations* states in relevant part as follows:

> **WARNING**: In accordance with the National Fire Prevention Association Document 407-9, Section 2-13, "if passengers remain onboard the aircraft during fuel service, at least one qualified person trained in emergency evacuation procedures shall be in the aircraft, at or near a door at which there is a passenger loading walkway, integral stairs which are down, or a passenger loading stair or stand." A NO SMOKING sign shall be displayed in the cabin and the rule enforced. Additionally, **fueling must not commence unless the forward entry door is open. (**Emphasis added)

The Company submitted a Sign-and-Return document titled *SAT ATW Safety Alert* outlining the Company's goal of assuring weight and balance accuracy. That Sign-and-Return also contained a checklist that spelled out the following relevant requirements for an aircraft parked at the gate with brakes released:

- Advise Pilots L1 door must be re-opened to send a revised WBR.
- Request Pilots re-set A/C brakes.
- Call FLIFO SDN 662-0140 to reset OUT time. Note: Brakes must be re-set before calling FLIFO.
- Make edits to OTIS.
- Verify FOB, Gallons Added and Jumpseat Riders info.
- Before closing L1 door, verify revised WBR was received and confirm WBR was received and confirm WBR version # sent with Pilots.

That Sign-and Return document had been signed by the Grievant on August 3, 2018 and according to Mr. Thomas, when he had reviewed the weight and balance procedure with the Grievant on January 7, 2019, the Grievant acknowledged that he had not followed the required procedures while working flight #741 that day.

During his testimony, the Grievant acknowledged that the L1 door had not been opened after he had pulled the jet bridge back to the aircraft during the refueling operation. However, he maintained that he could not tell when the fueling operation began because he could not actually observe the fueling operation from his position on the jet branch. He also maintained that the flight crew members were partly to blame for the error because the pilots could observe the fueling operation from the cockpit window and because the L1 door-open warning light would not have been illuminated in the cockpit, they would surely have known that the aircraft door was closed. In addition, he insisted that he could not open the L1 door because the flight attendant had failed to unlatch and crack the door open so that he could open it fully. He also testified that a supervisor had come down the jet bridge while the additional fuel was being added to the aircraft, and that he did not say anything to the Grievant about the L1 door being closed.

It may have been true that the pilots were able to determine that the aircraft door had not been opened while fuel was being added. It may also have been true that the flight attendants did not crack the cabin door so the Grievant could open it fully. However, as previously discussed above, the Company's *SAT ATW Safety Alert* procedure required an agent (Grievant) to remind the pilots to reset the aircraft parking brake and open the L1 door before refueling began. In addition, Section 6.9 of the Company's Ground Operations Manual states unequivocally that "**fueling must not**

commence unless the forward entry door is open". Therefore, it was the Grievant's responsibility to take whatever action was necessary to assure that the L1 door was open before the fueler began adding fuel to the aircraft.

During his testimony, Supervisor Thomas also pointed out that leaving the L1door closed and the slide armed while the jet bridge was positioned against the aircraft, posed an additional serious safety hazard. According to Mr. Thomas, in the event that the L1 door had been opened while the jet bridge was positioned against the aircraft, the slide would have deployed directly into the jet bridge, thereby blocking the L1 exit and potentially injuring anyone standing on the jet bridge near the door.

In view of the above, the evidence and testimony established that the Grievant failed to follow the proper guidelines outlined in Section 6.9 of the Ground Operations Manual when he failed to correctly document the aircraft fuel load while working flight #741 on January 7, 2019. The evidence and testimony also established that he had violated Ground Operations Basic Principles of Conduct #14 when he performed his job in a careless, negligent, and unsatisfactory manner, and #28 when he failed to comply with safety rules or regulations that day.

Analysis and Opinion

As previously discussed above, the evidence and testimony clearly established that the Grievant's actions on January 6 and January 7, 2019 constituted violations of Company Basic Rules of Conduct Numbers 14 and 28. The Union argued vigorously that even though the Grievant may have violated those rules, his long tenure with the Company constitutes a mitigating factor that renders the penalty of termination to be too severe in this instance.

There is some merit to the Union's argument that an employee's long tenure may constitute a mitigating factor in some cases. In the instant case however, the record established that prior to his termination on January 21, 2019, the Grievant had previously accumulated the following active disciplinary letters in his file for instances of misconduct and/or unsatisfactory job performance during the 8-month period of February 7, 2018 through October 2, 2018:

February 7, 2018	Letter of Instruction	Lost SIDA Badge
February 16, 2018	Final Letter of Warning	Violation of BPOC #14
February 23, 2018	Final Letter of Warning	Violation of BPOC #14
May 26, 2018	Letter of Instruction	Violation of BPOC #2, 3, 25
August 28, 2018	Letter of Warning	Violation of BPOC #2, 4, 8, 25
August 31, 2018	Letter of Warning	Violation of BPOC #2, 8, 25

October 2, 2018	Final Letter of Warning with 3-Day Suspension	Violation of BPOC #14, 28, 32

Significantly, the letters issued to the Grievant on February 16 and February 23 were Final Warning Letters for similar incidents involving violations of BPOC Rule #14. In addition, each of the seven above-listed letters contained a warning to the Grievant that further violations of Company regulations may result in discipline up to and including termination.

The Grievant did not dispute the existence of the above-listed active disciplinary letters in his file at the time of his termination, and during cross-examination, he acknowledged that he was aware of the Company's Principles of Conduct before his termination. He also acknowledged he was aware that he could be disciplined for violating those principles. Further, he made no claim that he was not aware of Company procedures associated with his job assignment, and he also made no claim that he required additional training in order to perform his job responsibilities. Therefore, in view of the above, the Grievant's long tenor with the Company does not constitute a mitigating factor in this instance.

The Grievant testified that he is a single parent and that his daughter suffers from a serious health condition. He also testified that seeing her struggle with her health problems and not being able to help her, caused him to worry and lose his concentration at work on occasion. He stated that although he had believed he was able to handle that situation on his own, he now realized that he should have reached out for help. The Union maintained that the Grievant's concern for his ailing daughter constituted another mitigating factor in this instance.

It is truly regrettable that the Grievant's daughter may be suffering from a serious health condition, and this arbitrator is sympathetic about the problems the Grievant may be experiencing in his personal life. However, it is significant that six of the seven warning letters listed above had offered help to the Grievant as follows:

> 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 a Supervisor or Manager**. (Emphasis added)

The Grievant had been reminded repeatedly that Management was available to assist him with any problems he may be experiencing and as the following testimony established, he had never advised Management of his problem or requested help:

> Q. During the past year, did you ever request or apply for a leave of absence from work?
>
> A. No, I did not.

Q. Did you ever apply for FMLA leave to take some time off to care for your daughter?

A. No.

Q. Okay. Did you request a personal leave?

A. No.

Q. Did you ever go to your leaders and say I'm having these issues and I need help dealing with it?

A. No.

Once again, the Union's argument that problems in an employee's personal life could constitute a mitigating factor in some cases. However, in view of the multiple warnings and offers of help given to the Grievant during the 12-month period just prior to the event's leading to his termination, I am not persuaded that the problems he may have been experiencing in his personal life constitute a mitigating factor in this instance.

The Grievant was remorseful during the arbitration hearing and as previously stated, this Arbitrator is truly sympathetic with regard to the problems he may be experiencing in his personal life. However, as pointed out by Arbitrator Marvin Hill in Southwest Airlines, Inc./TWU Local 555, (June 3, 2014) (grievant C), the action taken by Management should not be disturbed if it is supported by the evidence and was not arbitrary, capricious or unreasonable. In that regard, Arbitrator Hill had this to say: (All emphasis in original)

> **I find no evidence of any disparate treatment by the Company regarding how it treated the Grievant.** At all times it must be remembered that the Grievant had three (3) active disciplinary letters documented in his employment *file, all involving safety issues*, two of which were titled "final warnings." Mr. Grievant C was really given special consideration by being issued yet another "final warning." While the five-day suspension may not be the one I would have assessed, especially when it is considered that the Grievant does not work aircraft too often, I cannot say that the penalty meted out by the Company was outside the range of a reasonable penalty, given the Grievant's overall employment record.
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> **The general rule is if management's decision was not arbitrary, capricious, or blatantly unreasonable, or based on a serious mistake of fact, its decision should stand. Further, as outlined by one arbitrator:**
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> > **The boundaries of reasonableness should not be so narrowly drawn that management's judgment must coincide exactly with the arbitrator's judgment. If the penalty imposed is within the bounds of what the arbitrator can accept as a range of reasonableness, it should not be disturbed.**

Arbitrator Hill also provided the following citations in his discussion of the Grievant C case:

> *FMC Corp, supra at* 1775 n. 4, citing *Trans World Airlines*, 41 LA (BNA) 142, 143-144 (M. Beaty, 1963)("The generally accepted rule is that the arbitrator does not succeed to the functions of management, that an arbitration clause is not an abdication by management of its duties in regard to discipline and discharge and does not grant to the arbitrator authority to redetermine the whole matter by his own standards as if he were making the original decision. **It includes the principles that discipline, and discharge are still management functions, and the sole duty of the arbitrator is to determine whether management's decision was arbitrary, capricious, unreasonable or based on mistake of fact.**"). See also, *American Airlines & TWU,* Case M-0116-02 (Angelo, 2002)(Hall, grievant)("each case must be considered individually"). Arbitrator Angelo expressed the rule followed by arbitrators as follows:" the closer poor performance comes to gross negligence, the greater the Company's right to respond with serious discipline, including discharge . . . the Company, given the appropriate circumstances, is entitled to impose discipline following a performance error." *Id.* at 9. Mr. Angelo concluded that management "should exercise its right to discipline only where the contextual facts indicate a lack of reasonable care customary for the job." *Id.* at 8n.4. The fact that other employees may have been assigned to assist does not always relieve the poor performing employee of culpability. Arbitrator William Eaton, in *American Airlines & TWU 505,* Case M-861-94 (1994)(Anderson, grievant), articulated the principle this way: "**It is clear that if employees are specifically assigned to a task, the fact that others may be assigned to assist does not negate the specific assignment nor relieve an employee so assigned of the responsibility of the assignment**". (Emphasis added")

Similar to the Grievant C case, the Grievant in the instant case had seven active elements of discipline in his file and he had been warned multiple times in the previous year that he must correct his conduct and behavior. Therefore, there can be no question that he knew or should have known that his job was in serious jeopardy long before January 6 and 7, 2019, and that he absolutely must take whatever action was necessary to correct his job deficiencies if he expected to keep his job. However, as the evidence and the Grievant's own testimony clearly demonstrate, he failed to take any action whatsoever that would cause him to make the necessary corrections. Thus, the Company's action of terminating the Grievant's employment on January 21, 2019 was not arbitrary, capricious, unreasonable or based on a mistake of fact.

Finding

In a disciplinary case such as this, the Company is the moving party and bears the burden of providing proof that the disciplinary action meets the just cause standard and that the penalty imposed was appropriate. Notwithstanding the vigorous and skilled arguments advanced by the

Union on the Grievant's behalf, the evidence and testimony submitted during the arbitration hearing clearly established that the Company has met its burden. Therefore, I find that the *Results of Fact-Finding – Termination* letter dated January 21, 2019 was issued to the Grievant for just cause.

Award

The grievance is denied in its entirely. In accordance with Article 20.C of the Collective Bargaining Agreement, the cost of the arbitration is assessed to the Union.