

Arbitrator's Opinion and Award

<p style="text-align: center;">In the Matter of Arbitration</p> <p style="text-align: center;">Between</p> <p style="text-align: center;">Southwest Airlines Inc. (“Company”)</p> <p style="text-align: center;">And</p> <p style="text-align: center;">Transport Workers Union of America, AFL-CIO, Local 555 (“Union”)</p>	§ § § § § § § § § § §	<p>Grievant: [REDACTED]</p> <p>Case Number: SAT-R-0797-19</p> <p>Issue: Termination</p>
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Before:	Paul Chapdelaine
Appearances	
For the Company:	Jonathan Rector
For the Union:	Randy Barnes
Location of Hearing:	Dallas, Texas
Date of Hearing:	August 20, 2019
Date Record Closed:	October 11, 2019
Date of Award:	October 28, 2019

Summary of Award

The Grievant violated the Company's BPOC when he carelessly abused and damaged a 737-800 tail stand on the date in question. Therefore, the charge that he violated BPOC #12 and #14 is sustained. However, the record contains insufficient evidence to support a finding that the Grievant failed to immediately report the tail stand damage to his supervisor. Therefore, the charge that he violated BPOC #16 is not sustained.

The Results of Fact-Finding – Termination letter dated April 1, 2019 shall be reduced to a Letter of Final Warning for the Grievant's violation of BPOC #12 and #14 on March 13, 2019. Accordingly, the Grievant shall be reinstated to his employment with the Company as soon as is practicable with full back pay, minus interim earnings, and with seniority and benefits unimpaired.

Since this is a split decision, the cost of the arbitration is assessed equally to the Company and to the Union in accordance with Article 20.C of the Collective Bargaining Agreement.



Paul Chapdelaine
Arbitrator
October 28, 2019

Issue

The issue to be decided in this case is whether the Company had just cause to terminate the Grievant on April 1, 2019 and if not, what is the appropriate remedy?

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.** In the event of a grievance arising over the interpretation of, or application of, this Agreement (“Contractual Grievances”), or in the event of a grievance involving disciplinary action other than discharge (“Disciplinary Grievances”), the following steps shall apply. However, in the event of a grievance involving discharge or a Union grievance concerning a change in Work Rules (“Discharge/Work Rule Grievances”), 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. If a termination is grieved, insurance benefits will continue until all grievance procedures have been exhausted and a final decision has been rendered. Employees are required to continue to pay the premiums when they are due; failure to do so will result in termination of insurance benefits.

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.** (Emphasis added)

IV. APPLICABLE RULES AND POLICIES

Basic Principles of Conduct

- A. 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 to discharge, depending on the particular violation and the circumstances.
12. **Abuse or destruction of Company property.** Converting to your own use, including sale or purchase of any Company property from the premises without proper approval of the Company
 14. Performing your job in a **careless, negligent,** or unsatisfactory manner. (Emphasis added)
 16. Failure to immediately report to your Supervisor an accident or incident involving personal injury or damage to equipment, facilities, aircraft, and/or other property in the workplace shall warrant termination.

Background

██████████ (“Grievant”) was hired by the Company as a Telephone Reservation Agent on May 16, 2010. He subsequently became a Ramp Agent on March 16, 2015, and at the time of the incident leading to this arbitration, he was assigned to work as an Airport Ramp Agent at the San Antonio Airport in San Antonio, Texas (“SAT”).

On March 13, 2019, the Grievant was assigned to install a tail support stand at the aft fuselage of a Company 737-800 aircraft. Because of a malfunction with the spring tensioner in the heavy tail stand, the Grievant had difficulty installing the tail stand and making it stable. He became

frustrated with the tail stand and tossed it to the ground. He then picked it up and attempted to install it again without success; whereupon he tossed it to the ground once again. As a consequence of being tossed down, the metal carrying handle on the tail stand was severely damaged.

The tail stand was removed from service and a serviceable tail stand was put in place to stabilize the aircraft for unloading. Two days later, on March 15, 2019, the Manager of Ramp Operations was notified by a Facilities Maintenance Mechanic that the internal tensioner spring on the tail stand was broken and the handle had suffered an unusual amount of damage.

An investigation of the incident was conducted and during a Fact-Finding Meeting held on March 27, 2019, the Grievant admitted that he had caused the damage to the carrying handle when he tossed the tail stand down on the ramp out of frustration. On April 1, 2019, a *Results of Fact Finding – Termination* letter was issued to the Grievant, charging him with violation of Southwest Airlines' Ground Operations Basic Principles of Conduct (“BPOC”) #12, #14, and #16, and immediately terminating his employment.

A timely grievance was submitted protesting issuance of the subject Termination Letter and when the parties were unable to resolve the dispute during earlier steps of the grievance procedure, the matter was advanced to arbitration for final and binding resolution. This Arbitrator was subsequently 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 August 20, 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 agreed to submit post-hearing briefs, and upon timely receipt of said briefs, the record was closed on October 11, 2019.

Positions of the Parties

Both the Union and the Company submitted detailed, comprehensive, well-written post-hearing briefs addressing all the issues which arose in the instant case. Their arguments concerning the issues 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:

- The Company's BPOC place an obligation on employees to report accidents or injury involving equipment damage.
- The Grievant became frustrated on the date in question when he was assigned to work an extra flight that day.
- The metal handle on the subject tail stand was severely damaged when the tail stand was thrown to the ground by the Grievant.
- The Grievant admitted during his Fact-Finding meeting that he became frustrated with the malfunctioning tail stand and angrily threw it to the ground more than one time.
- Another Company Ramp Agent subsequently reported witnessing the Grievant behaving angrily, and that he had deliberately and violently thrown the tail stand to the ground.
- By his actions, the Grievant had violated BPOC #12 prohibiting abuse of Company property and #14 prohibiting employees from performing their duties in a negligent and careless fashion.
- The Grievant's supervisor had promptly tagged the tail stand out of service when he learned that the spring tensioner had malfunctioned. However, Management was not aware that the Grievant had deliberately broken the handle until notified by the Facilities Maintenance department.
- Although the Grievant notified his supervisor that the tensioner spring in the tail stand was not functioning properly, he neglected to inform him that the handle had been broken when he intentionally threw the stand to the ground.
- In failing to immediately notify his supervisor that the handle had been broken when he threw the tail stand to the ground, the Grievant had also violated BPOC #16; which calls for a mandatory termination.
- The Grievant has been trained on the proper procedure to be followed when installing the tail stand and understands his responsibilities under the Company's BPOC.

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:

- While the Grievant was attempting to install the tail stand on the date in question, it fell to the ground several times.
- The Grievant immediately notified his Supervisor that the tensioner spring inside the tail stand was not working properly.
- The handle detached of the tail stand while the Grievant was demonstrating the malfunctioning spring to his Supervisor.
- The Grievant's Supervisor was aware of the damage to the handle because he had been standing right there when the handle separated from the tail stand.
- Because his Supervisor had been present when the tail stand handle broke off, the Grievant had no reason to believe that his Supervisor was not aware of the damage.
- During the Company's investigation, the Grievant cooperated and provided a written statement concerning the incident.
- No video recording of the incident was produced during the arbitration hearing to disprove the Grievant's version of the incident.
- The Grievant is a nine-year employee with no active discipline in his file at the time of his termination.
- The Grievant has received good performance evaluations during his nine-year career with the Company.
- Disparate treatment has been applied to the Grievant because other employees have received lesser discipline for incidents involving equipment damage.
- The Company's application of a no tolerance policy concerning equipment damage is a clear violation of the tenets of just cause that was negotiated in the Collective Bargaining Agreement.

- The claim by the other Ramp Agent that the Grievant had violently thrown the tail stand to the ground should not be accepted because that Agent did not testify during the arbitration hearing and was not available for cross examination.

Based on the foregoing, the Union insisted that just cause did not exist for the Grievant's termination. As a remedy, the Union requested that the Grievant be reinstated to his employment with the Company and that he be made whole in all respects.

Discussion

The evidence and testimony established that the Grievant was performing his duties as a SAT Ramp Agent on Flight 883 at Gate 12 on the evening of March 13, 2019. It was also established that Flight 883 was operating as a 737-800 aircraft that day, and that in accordance with the Company's standard operating procedure, it was necessary to install a tail stand at the rear jack point of the aircraft fuselage before the passengers and cargo could be unloaded.¹ Also, in accordance with Company procedure, it was necessary for the Grievant to install the tail stand within two minutes of Flight arrival on the gate that day.²

While the Grievant was attempting to install the tail stand on the aircraft that had just arrived on Flight 883, the internal spring tensioner on the tail stand malfunctioned, and the stand could not be installed properly. He became frustrated and tossed the tail stand to the ground. He then tried to install it a second time and tossed it down again when it could not be installed properly.

Ramp Supervisor, David Sanchez, noticed that the Grievant was having difficulty with the tail stand and came to assist him with installing it. After confirming that the stand could not be installed, Mr. Sanchez removed the tail stand from the area, tagged it out of service, and had a serviceable tail stand installed while the Grievant started unloading baggage from the aircraft.

¹ A tail stand is a 12-foot-long metal post that is 4 to 5 inches in diameter and weighs 50 pounds. It is installed between the ground and the rear fuselage on a 737-800 aircraft for the purpose of limiting the amount of up and down pivoting of the fuselage while passengers, bags, and cargo are being loaded and unloaded. The stand has a lifting ring installed near the top to assist with moving and installing the stand and two wheels are installed at the lower end to assist in moving the stand around on the ramp.

² The Company adopted the use of the tail stand on 737-800 aircraft in September 2018 and it was first implemented at the SAT station in early November 2018.

Later that evening, another SAT Ramp Agent [REDACTED] who was also working Flight 887 that evening notified Mr. Sanchez that the Grievant had been observed throwing the tail stand down hard on the concrete ramp two times, causing the handle to break.³

The tail stand was subsequently moved to the Facilities Maintenance Shop the following morning and two days later on March 15, 2019, Ground Equipment Mechanic, [REDACTED], sent an email to Mr. Sanchez, notifying him that the internal tensioner spring on the tail stand was broken and that the carrying handle had suffered an unusual amount of damage. [REDACTED] also included a copy of that email to Station Manager Tony Hinojos and Manager of Ramp Operations, Robert Nagy. [REDACTED] later informed Nagy on March 18 that the cost to repair the tail stand spring and handle would be \$1771.74, including parts and labor.

An investigation of the incident was conducted and during that investigation, Ramp Agent [REDACTED] claimed to Mr. Nagy that the Grievant had “slammed the tail stand to the ground”. Ramp Agent [REDACTED] subsequently provided a signed written statement to Mr. Nagy, which states as follows:

I (Ramp Agent [REDACTED]) was at Gate 12 Flight 887 on 3/13/19, [REDACTED] was pulling the stand to the back of the plane. He proceeded to put the stand up, having a hard time. He walked away from underneath the plane. He grabbed round wheel on the bar with both hands and threw it down hard as he could. Tried again to put bar up in the back of the plane. Wouldn't work. He walked away from the plane. Again, with both hands threw it down hard as he could. Sup (Supervisor) came, [REDACTED] lifted the bar up and that's when I saw the wheel was broken Wednesday 3/13/19.

During an informal discussion with Manager Nagy on March 15, 2019, the Grievant freely admitted that he had become “frustrated” and “tossed” the subject tail stand to the ground on the evening in question. He subsequently admitted again during a Fact-Finding Meeting held on March 27, 2019 that he was frustrated and angry when he had attempted to install the malfunctioning tail stand on the evening in question. He also admitted that the handle had been broken when he threw the stand down on the ramp.

On April 1, 2019, a *Results of Fact Finding – Termination* letter was issued to the Grievant which states in relevant part as follows:

After completing the investigation into this matter, and after consideration of the matters discussed in the fact finding and through your own admittance, we have concluded that on March 13, 2019 you purposely threw down a tail stand out of anger. As a result of your

³ The name of Ramp Agent (“N”) has been redacted and (“N”) did not appear or testify during the arbitration hearing.

actions, this caused damage to the tail stand and you failed to report the damage to your Leader. Such conduct was a violation of the Southwest Airlines' Ground Operations Basic Principles of Conduct, including, but not limited to, the following:

12. Abuse or destruction of Company property. Converting to your own use, including sale or purchase of any Company property from the premises without proper approval of the Company.
14. Performing your job in a careless, negligent, or unsatisfactory manner.
16. Failure to immediately report to your Supervisor an accident or incident involving personal injury or damage to equipment, facilities, aircraft, and/or other property in the workplace shall warrant termination.

Based on the severity of your actions and based on the above, your employment with Southwest Airlines is terminated, effective immediately.

Rules #12 and #14

As previously discussed above, there was no dispute that the internal tensioner spring on the subject tail stand was malfunctioning on the evening in question, and that the Grievant became frustrated when he experienced problems installing the stand due to the malfunctioning spring. There was also no dispute that the tail stand was dropped to the concrete ramp by the Grievant at least two times, which resulted in severe damage to the lifting handle.⁴

During his testimony, the Grievant stated that Flight 883 had been reassigned to Gate 12 that evening because the gate at which Flight 883 was originally assigned was occupied by another departing aircraft that was delayed. The Grievant acknowledged that he was annoyed by the last-minute gate change because it required him to perform extra work. However, he insisted that although he was annoyed by the gate change and frustrated by the malfunctioning tail stand, he emphatically denied that he had angrily thrown the stand down on the ramp as Ramp Agent (████) had claimed. As the Grievant explained:

I didn't throw it down as hard as I could. I tossed it to the side.

According to the Grievant, it was likely that Ramp Agent (████) was exaggerating in the written statement that had been submitted to Management because of a previous disagreement he had had with Agent (████). Thus, given the subjective nature of the Agent (████) description of the Grievant's actions, and because Agent (████) was not available to provide testimony and respond

⁴ A photograph that was submitted during the arbitration hearing confirmed that the three metal mounting rods attaching the round handle to the subject tail stand were bent over and the handle was detached from the mounting rods.

to cross-examination during the arbitration hearing, the Grievant's claim that Agent () held animosity toward him is accepted as undisputed. In addition, the Grievant's claim that he did not throw the tail stand down "as hard as I could. I tossed it to the side" is also accepted.

The Company also submitted a copy of a Fact-Finding Report taken by a Representative of the Texas Workforce Commission ("TWC") during an interview with the Grievant on April 19, 2019 concerning his application for unemployment compensation benefits. In that Report, the Representative provided his/her understanding of the Grievant's responses concerning what had happened on the evening in question in relevant part as follows:⁵

Q. What was reason for separation from work?

A. I was fired for a violation of policy.

Q. What was reason given to claimant?

A. Same above.

Q. Exactly what happened?

A. 3/16/19; I was having difficulty with get (sic) the **tail finn** that I use to keep the plane from tipping over. The **string** on the **tail finn** wasn't working, so out of frustration I threw it on the ground. I picked it up again and tried using the **string** and again it did not work. Out of frustration I threw it on the ground again.

1 minute later Dave Sanchez/Supervisor came to check on me to see why the pole was on the ground. I explained that the **tail finn** isn't working. When I was showing him the **tail finn** wasn't working, the handle on the **tail finn** fell off.

Based on the Representative's Fact-Finding Report outlined above, it is clear that the Report is simply the Representative's version of the Grievant's statement, and that it contains glaring errors. For example, the Report inaccurately reflected that the Grievant was referring to a "tail finn" rather than a "tail stand". In addition, the Report also referred to a "string" rather than a spring. Therefore, based on those glaring errors, and because the TWC Representative was not available to provide testimony and respond to cross-examination during the arbitration hearing, the Grievant's testimony that he did not tell the Representative that he "threw the tail stand down to the ground" is also accepted as undisputed.

The Grievant acknowledged during his testimony that he had received an abbreviated training session on the proper procedure to be followed when installing the tail stand. He also

⁵ The TWC Representative did not appear or testify during the arbitration hearing.

acknowledged that he had previously installed the tail stand on other Company aircraft. Thus, I am persuaded that he had been adequately trained and that he understood how to properly install the tail stand.

In view of the above, the evidence and testimony support a finding that the Grievant abused and damaged Company property while performing his job in a careless, negligent, and unsatisfactory manner on the date in question. Therefore, whether the Grievant angrily threw the tail stand down as Agent (████) claimed, or he tossed it aside as the Grievant claimed, it is clear that his careless and negligent actions caused severe damage to the handle. Accordingly, the charge that the Grievant violated the Company's BPOC #12 and #14 on March 13, 2019 is sustained.

Rule #16

As previously discussed above, there was no dispute that the Grievant had damaged the handle on the subject tail stand at approximately 7:15 p.m. on Wednesday, March 13, 2019. There was also no dispute that once it had been determined that the tail stand spring was inoperable, the stand was immediately moved away from the aircraft by Ramp Supervisor David Sanchez and tagged out of service. Mr. Sanchez subsequently sent an email dated March 13, 2019 - 7:27 p.m. to Juan Garay and Ground Equipment Mechanic, ██████; notifying them that the subject stand was inoperable. Said email states as follows:

Tail 27730 **has a broken handle** and no spring action has been tagged out. Located by Ken's office. (Emphasis added)

Juan Garay subsequently sent a reply email to Mr. Sanchez and ██████ on March 14 at 11:31 a.m. acknowledging that the tail stand had been received at the Ground Equipment Maintenance Shop. Mechanic ██████ then sent the following reply email to Juan Garay and Supervisor Sanchez on March 15 at 9:44 a.m. regarding the subject tail stand:

Was the tail stand dropped or dragged cause the round handle broke of (sic) due to a heavy hit?

A copy of Mr. ██████ email was also sent to Station Manager Tony Hinojos, Manager Nagy and Goudwin Clarke:⁶

During his testimony, Manager Nagy stated that he was off on the evening of March 13 and that he first became of the problem with the tail stand when he received the subject email from Mechanic ██████. According to Mr. Nagy, the Grievant willingly explained during the investigation

⁶ Neither Juan Garay nor Goudwin Clarke were identified during the arbitration hearing.

that he was frustrated with the tail stand and that he had angrily thrown it down two times. He also testified that the Grievant told him he had not informed Supervisor Sanchez on the evening in question that he had thrown the tail stand down. In addition, Nagy testified that Supervisor Sanchez had insisted to him that he (Sanchez) had not been present when the handle broke off the stand as follows:

Q. Now, to be fair, if I go back and read his written statement (Grievant's SOPI), the way he describes it makes it seem as though the handle broke off in the presence of Mr. Sanchez. Do you read it that way -- or did you read it that way? . . .

A. He makes it sound like it broke off when he was there.

Q. And is that consistent with what Mr. Sanchez told you?

A. No, it's not.

Q. Did Mr. Sanchez tell you that he did not witness it?

A. He did not witness it, and he was **adamant that he did not witness it**.

In the following testimony, Mr. Nagy explained that he had charged the Grievant with violating BPOC #16 because he had failed to immediately notify Sanchez that he had damaged the tail stand handle:

Q. All right. Now, with this rule as our backdrop, tell the Arbitrator what your understanding or how the Company interprets this rule when it comes to reporting damage to equipment.

A. The main thing is that any damage, whether it's intentional or accidental, must be reported immediately to a leader, a supervisor, or member of management.

Q. And under this rule, is it just the fact that there is damage generally or is it important to know the underlying cause of the damage?

A. Say that again.

Q. Is it important for you to know the underlying cause of the damage -- or damage to Company property?

A. No. I just need to know about it, so I can investigate it.

In view of the above testimony, it appears that Mr. Nagy was under the impression that Supervisor Sanchez had not witnessed the handle break off the stand while the Grievant was attempting to install it in Mr. Sanchez' presence. It also appears that Mr. Nagy may have had a legitimate suspicion that the Grievant was attempting to conceal the fact that he had broken the handle.

During his testimony, Supervisor Sanchez confirmed that the Grievant had called him to the back of the airplane while he was having trouble installing the tail stand. He also confirmed his claim

to Mr. Nagy that he did not know that the handle was broken until he attempted to move the tail stand away from the gate area:

Q. Okay. Did you later discover that the handle was broken?

A. Yes, sir, I did.

Q. How did you discover that it was broken?

A. When I was getting ready to move the piece of equipment that was still in the safety zone, I went to grab it by the handle and realized the handle was not intact anymore. It was not connected.

Q. But at any time, did [REDACTED] tell you the handle was broken?

A. No, sir.

Q. Now, **did you ever witness [REDACTED] break the handle?**

A. **No, sir, I did not.**

And during cross-examination Mr. Sanchez had this to say regarding whether he had seen the handle break off the stand:

Q. Okay. So did [REDACTED] lift the bar up and show you that the spring action wasn't working?

A. He informed me that the spring action wasn't working. And I remember asking him, "Well, make sure that that's what the issue is," and that's where we went from there.

Q. **So he never lifted it up and showed you that it wasn't working?**

A. **No, sir.**

Q. Could you read the last sentence in this statement? (Agent ([REDACTED]) statement)

A. "Sup came. [REDACTED] lifted the bar up, and that's when I saw the wheel was broken Wednesday 3/13/19."

Q. Okay. So the witness is stating that [REDACTED] lifted and showed you the bar?

A. Okay.

Q. Is that accurate, or no?

A. **I don't remember him lifting, showing me the bar.**

It is significant that after being presented with Agent ([REDACTED]) written statement during cross-examination, Mr. Sanchez simply stated that he did not remember the Grievant lifting the tail stand and showing him the damage, rather than convincingly stating that the Grievant had not done so.

During his testimony, the Grievant described the incident as follows:

Q. Okay. In your own words, would you please tell us what happened on March 13 of this year?

A. March -- the flight that we're talking about had come on the ground. It was a last-minute gate swap, as there was -- the gate it was supposed to go to had a delayed departure. So they sent an airplane to our gate.

As it's headed to our gate, go outside, noticed that's a 800. So I realize I need to go grab a tail stand. Go over to grab the tail stand, go to the back of the aircraft, attempt to try to put the tail stand into the hole that's in the aircraft for it to go in, would not go. Keep trying to get it in there. End up getting frustrated as it's coming down and toss it to the side. Go around and regroup, thinking what I should do next

I said, "Well, maybe I'm just not doing it right. Let me try one more time." Go pick up the pole, try to put it into the airplane again. Still doesn't go. Get frustrated. Toss it down.

Then I --as I'm thinking about what I should be doing next, supervisor -- I wave the supervisor down. The supervisor comes over to the tail stand to see why it's not in the airplane, why it's on the ground. And I pick up the tail stand, I tell him like, "There's no spring action. Like it won't go into the airplane."

I grab the handle of the tail stand. There's a little sandpaper part to help you turn the tail stand to adjust it. Grab the handle. The sandpaper part to help you turn the tail stand to adjust it. Grabbed the handle. The sandpaper part, squeeze it together as hard as I can to show that there's just no movement in there like there's supposed to be. **Handle ends up coming off in my hand.**

Supervisor Dave says, "That's that," takes the tail stand, walks it off, brings it over to the equipment graveyard. And I proceed to go get my belt loader as he arranges to get another tail stand over to the aircraft. I get my belt loader going and start downloading luggage.

Q. Okay. Was the handle still intact and attached to the stand when the supervisor walked up to you?

A. Yes, it was still attached when the supervisor walked up.

Q. **Did the supervisor himself observe the handle breaking loose in your hand?**

A. **Yes.**

Q. He did?

A. Yes.

Q. When this happened, did the supervisor at that time direct you to write a statement of what happened?

A. No. **He said, "that's that," walked away with the pole,** and that's the last I heard of it for two days.

Q. Okay. Did you believe that at that moment, your supervisor, you know, was aware of the damage to the tail stand?

A. Yes, he was.

Q. -- And what happened?

A. Yeah. He was at the gate. He walked up to me to -- you know, as I showed him what goes off, **the handle comes off in my hand, literally right in front of him.**

The Grievant's testimony was responsive during his testimony and his claim that Supervisor Sanchez had seen the handle break off, including the associated details, was credible.

On an occasion such as this where a substantial difference exists between the testimony provided by the witnesses, it is the Arbitrator's responsibility to determine which version of the narrative is most likely to have occurred. In the instant case, the Grievant's testimony regarding the incident was consistent and credible. In addition, the written statement provided by Agent (████) confirmed the Grievant's testimony that the handle was already broken while he was demonstrating the problem to Mr. Sanchez. However, as previously discussed above, Mr. Sanchez was less than convincing when he stated during cross-examination "**I don't remember him lifting, showing me the bar**".

In view of the above, I am persuaded that Supervisor Sanchez was aware, or should have been aware, that the handle was broken and had detached from the tail stand while the Grievant was demonstrating the inoperative spring to him. In addition, I am persuaded that when he realized that the subject handle had been damaged, and again when he received the verbal report from Agent (████) that the Grievant had abused the tail stand on March 13, Mr. Sanchez had not asked the Grievant to explain how the tail stand had been damaged, nor had he directed the Grievant to provide a written statement concerning the damaged tail stand.

Notwithstanding the above, no evidence was submitted to establish that Mr. Sanchez actually witnessed the Grievant tossing or throwing the tail stand to the ramp. In addition, there was no evidence that Mr. Sanchez was being deliberately untruthful in his testimony when he stated that he had not witnessed the handle coming off of the tail stand while the Grievant was showing it to him on the evening in question. Moreover, with the pressure and stress associated with supervising

an on-time gate operation, along with the short two-minute time constraint placed on Agents to get the tail stand installed, it is entirely possible that he simply failed to make a mental note of the handle falling off while the Grievant was attempting to install the stand that evening.

Mr. Nagy also provided the following testimony in which he implied that the Grievant was not only required to report the broken handle to Supervisor Sanchez, but that he was also required to immediately explain to Sanchez the cause of the broken handle:

Q. And finally, with respect to 16, “failure to immediately report.” Can you explain to the Arbitrator how it is that [REDACTED] violated that rule?

A. To immediately report an incident or an accident, whether it’s equipment or facilities, aircraft, you have to report to a supervisor something that was out of the ordinary. And that’s not something that should normally take place, whether it’s an accident.

So in this case, if he became frustrated with the equipment, even if he did become frustrated and threw it to the ground, I would still expect him to explain it to the supervisor, “Hey, this thing is broken. This is what happened.” And then we would deal with it from there

Q. Is that what the rule requires?

A. Yes.

Q. Is the rule satisfied by [REDACTED] just alerting his supervisor, Mr. Sanchez, that there was a piece of equipment, if the tail stand was not working properly?

A. No, because we didn’t have knowledge of anything other than a malfunction until two days later.

As previously discussed above, the evidence and testimony established that the subject handle broke off the tail stand while the Grievant was showing it to Supervisor Sanchez. In addition, after Flight 887 had departed SAT on the evening in question, Agent ([REDACTED]) had verbally reported to Supervisor Sanchez that the Grievant had thrown the tail stand down on the ramp, causing damage to the handle. However, Sanchez did not investigate and ask the Grievant about the damaged handle, nor did he direct the Grievant to provide a written statement about it. In fact, the evidence and testimony established that the only time the Grievant was asked about the incident was during Mr. Nagy’s investigation on March 15. In his written statement (SOPI) dated March 15, 2019, Mr. Nagy had this to say about his investigation:

. . . When [REDACTED] (Grievant) and [REDACTED] came into the training room to complete their statements, [REDACTED] **had a concerned look on his face and stated that he was the one that handled the Tail Stand, and the spring wasn’t working and he became “frustrated” and “tossed” the Tail Stand to the ground.** I asked him to complete a SOPI stating everything he knows and if he found the damage or caused the damage, and if so, why he did not report it. (Emphasis added)

As Mr. Nagi's SOPI made clear, the Grievant had readily admitted to him on March 15 that he was frustrated when he tossed the tail stand to the ground.

The Grievant subsequently provided the following SOPI dated March 15, 2019:

While trying to put tail stand into airplane could not get the long heavy awkward pole to go into position and would not budge. After attempting several times could not get the pole to budge. Pole was then sent to the side. Tried one more time with same results when sup saw that something was amiss came over and was going to try to put pole in. I went over grabbed the handle and the shaft of the pole and with full strength tried to pull the pole together to show there was not spring action and the handle came apart. Sup carried out the pole and tagged out.

There can be no question that the Company has a right and responsibility to require its employees to promptly report incidents or accidents involving damage to aircraft, equipment, or facilities, or involving personal injury. As such, the language contained in BPOC #16 clearly states that such accidents or incidents must be reported to a supervisor immediately. However, that language does not support the Company's argument that an employee is also required to immediately report all of the circumstances associated with such accident or incident. As with most accidents or incidents, the surrounding circumstances and details that caused the occurrence are normally collected by the Company during its investigation of an accident or incident after it has been reported.

The evidence and testimony in the instant case made it abundantly clear that the Grievant had readily admitted mishandling the subject tail stand on the evening in question, and no evidence was submitted to establish that he had ever attempted to conceal that fact. The evidence and testimony also made it clear that it was reasonable for the Grievant to have believed that Supervisor Sanchez knew, or should have known, that the handle was broken when it came off in his hands while he was demonstrating the malfunctioning tensioner spring to Sanchez. Further, absent any additional questions or directives from Supervisor Sanchez, it was also reasonable for him to believe that he was not required to provide any additional information to Mr. Sanchez concerning the broken tail stand.

In view of the above, the charge that the Grievant violated BPOC #16 is not sustained.

Finding

In a disciplinary case such as this, the Company bears the burden of providing sufficient evidence to establish just cause for such disciplinary action. In the instant case, the evidence and testimony clearly established that just cause existed to discipline the Grievant for violating the Company's Basic Principles of Conduct #12 and #14 when he carelessly abused and damaged the tail stand on the date in question. Therefore, the charge that he violated BPOC #12 and #14 is sustained. However, the record contains insufficient evidence to establish that he also violated BPOC #16.

The Grievant had nearly nine years' service with the Company and his Performance Evaluations established that he was a satisfactory employee during that time. In addition, he had no discipline in his file at the time of his termination. Further he willingly accepted responsibility for his actions that resulted in damage to the subject tail stand and he expressed remorse for his misconduct. Therefore, I find that the penalty of termination is too severe in this instance.

Award

The grievance is granted in part and denied in part. The Results of Fact-Finding – Termination letter dated April 1, 2019 shall be reduced to a Letter of Final Warning for the Grievant's violation of BPOC #12 and #14 on March 13, 2019. Accordingly, the Grievant shall be reinstated to his employment with the Company as soon as is practicable, with full back pay, minus interim earnings, and with seniority and benefits unimpaired.

Since this is a split decision, the cost of the arbitration is assessed equally to the Company and to the Union in accordance with Article 20.C of the Collective Bargaining Agreement.