

**IN ARBITRATION**

In the Matter of the Arbitration Between:  
**SOUTHWEST AIRLINES CO.**

**and**

Grievance of:

████████████████████  
Termination

**TRANSPORT WORKERS UNION OF AMERICA LOCAL 555**

Before M. David Vaughn, Arbitrator

**OPINION AND AWARD**

This proceeding takes place pursuant to Article 20 of the collective bargaining agreement (the "Agreement") between Southwest Airlines Company ("SWA," the "Employer" or the "Company") and the Transport Workers Union of America Local 555 ("TWU" or the "Union") (together, the Company and the Union are the "Parties" to the proceeding) to resolve a grievance which protests the Company's termination of Ramp Agent ██████████ ██████████ ("Grievant"). The Parties were unable to resolve the dispute through the steps of the negotiated grievance procedure, and the Union invoked arbitration. From a panel of arbitrators maintained by the Parties, I was designated to hear and decide the dispute.

A hearing was convened in Dallas, Texas, on August 8, 2019, at which the Company was represented by Senior Labor Relations Manager Jennifer Traylor and the Union by Grievance Specialist Oscar Camara. A court reporter was present at the hearing; by agreement of the Parties, the verbatim transcript (page references to which are designated as "Tr. \_\_\_") which she caused to be prepared constitutes the official record of the proceeding. At the outset of the proceeding, the Parties stipulated to the arbitrability of the grievance. The Parties were then each afforded full opportunity to present witnesses and documents and to cross-examine witnesses and challenge documents offered by the other. Customer Service Manager Randolph Williams testified at the call of the Employer. For the Union testified District 5 Representative Robert Bettinger and Grievant, who was present throughout the hearing. All witnesses were sworn and, except for Grievant, sequestered. Joint Exhibits 1-7 ("J. Ex. \_\_\_") and Union Exhibits 1-3 ("U. Ex. \_\_\_") were offered and received into the record. At the conclusion of the hearing, the evidentiary record was complete. The Parties

elected to close by written post-hearing briefs. The record of proceeding closed on September 23, 2019, upon receipt of the last brief.

I find the dispute to be properly before me, ready for decision. This Opinion and Award is issued following review of the record and the arguments of the Parties. It interprets and applies the Agreement.

#### **ISSUES FOR DETERMINATION**

The Parties agreed that the issues for determination are:

Did the Employer terminate Grievant for just cause? If not, what shall be the remedy?

#### **RELEVANT CONTRACTUAL PROVISIONS**

Article Two of the Agreement (J. Ex. 1) (Scope of Agreement), in relevant parts, provides:

- 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 Twenty of the Agreement (Grievance/System Board/ Arbitration Discharge and Discipline), in relevant parts, provides:

- 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.

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L. **Interpretation/Application of 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 that the penalty assessed by the Company was arbitrary or unreasonable, he may modify or remove that penalty.

**FACTUAL BACKGROUND**

The Company is one of the largest U.S. airlines and employs more than 55,000 people. The Union represents a bargaining unit of the Company's Ramp Agents, Provisioning Agents, Operations Agents and Freight Agents. At all times relevant to the instant grievance, Grievant was a member of the bargaining unit and was covered by the Agreement.

**Relevant Company Rules**

The Company has promulgated a Ground Operations Employee Handbook ("Employee Handbook"). (J. Ex. 6) Section 3.2 of the Employee Handbook contains Basic Principles of Conduct which

require employees to "adhere to all Company policies and procedures" and states that, if any of the 42 principles is violated, such violation(s) may be grounds for disciplinary action ranging from a reprimand to discharge, "depending on the particular violation and the circumstances." Among other provisions, prohibitions and cautions, the Basic Principles of Conduct include:

2. An Employee on duty and in uniform reflects the Southwest Airlines attitude to our Customers on a personal basis. It is imperative that you remember that your appearance, attitude, and conduct, whether on or off duty, may be a reflection on Southwest Airlines, and that you act accordingly.
4. Complete coordination with Coworkers and Supervisors is required in order to provide harmonious working conditions.
8. Restricting work, using threatening or abusive language, intimidating, coercing or interfering with fellow Employees or their work.
18. Striking another Employee in a display of anger shall warrant termination.
25. Southwest does not want to interfere in the personal affairs of Employees, however, conduct on or off the job which is detrimental to the Company's interest including unacceptable or immoral behavior on Company property or any adverse conduct that reflects on the Company, whether on or off duty, may be cause for immediate dismissal.
27. Fighting, abusive and disrespectful behavior to a fellow Southwest Airlines Employee or Customer.
34. Interfering with, failure to cooperate with, or dishonesty in a Company investigation or fact finding.

The Company has also developed a Workplace Violence Prevention Policy, most recently revised on April 26, 2018. (J. Ex. 7) The Workplace Violence Prevention Policy provides:

[The Company] maintains a "Zero Tolerance" policy. Workplace violence will not be tolerated at Southwest Airlines, and any Employee found to be in violation of this policy will be subject to disciplinary action, up to and including termination of employment.

\* \* \*

Workplace violence is defined as actions or words that endanger or harm another individual . . . More specifically, any acts of physical violence . . . or other threatening behavior that occurs in the workplace . . . is prohibited and will not be tolerated. . . .

The Policy provides examples of "workplace violence" to include:

Making threatening remarks, . . . or intimidating conduct . . .

Aggressive or hostile behavior that creates a reasonable fear of injury . . .

It is undisputed that Grievant received the Employee Handbook, containing the Basic Principles of Conduct, and the Workplace Violence Prevention Policy and was familiar with their requirements.

### **Grievant's Work History**

Grievant was first employed by the Company on August 6, 2018, as a Ramp Agent at its Tampa (TPA) Station. (J. Ex. 2) Grievant's 100-Day Performance Appraisal (J. Ex. 5) contained eight areas that were rated "Needs Improvement" (including Safety, Bin Slip Completion and Procedures) and two areas that were rated "Unacceptable" (including Baggage/Cargo Handling) out of a total of 18 areas that were rated. Under "Attitude," the Comments/Discussion section indicated that Grievant "has displayed a negative attitude and also shows her frustration when receiving constructive feedback," that she "continues to struggle in many areas even though she received additional training," that she "second guesses herself when performing her duties which results in

minimum requirement not being met" and that "[h]er lack of critical thinking abilities hinders operational progress." Under "Aptitude," the Comments/Discussion section indicated that, "overall, [Grievant] is unable to keep up with the demands of the job" and that she "continues to struggl[e] with offloading carts and/or bins in a timely manner. Her 150-Day Performance Appraisal (*Id.*) showed substantial improvement, with only two areas that were rated "Needs Improvement." Under "Attitude," the Comments/Discussion section indicated that, "since [Grievant's] last appraisal [she has] made significant improvements in all areas" and, under "Aptitude," the Comments/Discussion section indicated that she "has learned to take on all responsibilities" and "has improved in all of her overall job performances."

### **Events Leading to Grievance**

On May 2, 2019, Grievant, functioning as the Gate Lead, was uploading the aircraft at Gate 39 with two other Ramp Agents. Ramp Agent [REDACTED] downloaded the rear of the aircraft and left with the transfer bags while the local bags were still being downloaded by Grievant from the front. Grievant made three or four calls on her radio to ask who the local driver would be. When [REDACTED] returned to the gate to pick up the local bags, Grievant was in the process of loading bags at the front of the aircraft.

A video of the Gate 39 operational area was taken in the ordinary course of business. The video (J. Ex. 3) shows that, at approximately 8:57:16, Grievant left the belt-loader, walked toward [REDACTED], who had stepped out of the cart, and became involved in an altercation with her. The video shows [REDACTED] pushing Grievant against a baggage cart and Grievant pushing back against [REDACTED]. At approximately 8:57:49, Ramp Agent [REDACTED] stepped between [REDACTED] and Grievant and tried to separate them. The video shows both employees continuing to reach for and push toward each other for many seconds, with obvious intent to continue the confrontation. Neither made any effort to de-escalate the incident.

██████████ stated that, even after he was able to separate them, "they continued to argue." (J. Ex. 4)

### **Investigation and Disciplinary Action**

On May 2, 2019, TPA Manager Williams was made aware of "two people fighting" on the Ramp. He obtained statements from all witnesses, including Grievant, ██████████, ██████████ and others (*Id.*), and viewed the video of the incident.

By a memorandum from Mr. Williams dated May 2, 2019 (J. Ex. 2), Grievant was informed that a Fact Finding meeting would be held on May 4, 2019, to discuss "an incident that occurred on Thursday May 2, 2019." Mr. Williams also informed her that, in the interim, she was "suspended with pay pending the fact-finding meeting and subsequent results." The fact-find meeting occurred as scheduled where, it is undisputed, Grievant refused to answer several questions. (Tr. 72)

By a memorandum dated May 8, 2019 (*Id.*), Mr. Williams informed Grievant that she was being terminated. The memorandum stated that it was determined at the Fact Finding meeting "that you were involved in a physical altercation with another Employee" and noted, in addition, that she "failed to cooperate during [her] fact-finding." The memorandum concluded that Grievant's conduct violated six Basic Principles of Conduct (nos. 2, 4, 8, 25, 27 and 34) as well as the Company's Workplace Violence Prevention Policy.

### **Grievance Process and Subsequent Events**

By a Grievance Form dated May 8, 2019 (J. Ex. 2), Grievant protested her termination. As a remedy, Grievant requested that the Company "[r]emove the discharge from my record and make me whole in every way including reinstatement, full seniority, back pay, benefits, and interest." By a brief memorandum dated May 23, 2019 (*Id.*), Labor Relations Manager Brian Steen denied the grievance.

The Parties were unable to resolve the dispute through the steps of the negotiated grievance process; and the Union invoked arbitration. This proceeding followed.

### **POSITIONS OF THE PARTIES**

The positions of the Parties were set forth at the hearing and in their post-hearing briefs. They are summarized as follows:

**Southwest** argues that it proved just cause to terminate Grievant. It contends that Grievant's conduct violated multiple Company policies and that the penalty fits the offense and is consistent in treatment to other cases of workplace violence. It asserts that there are no circumstances to mitigate the discharge decision.

The Employer further argues that the physical fight between Grievant and [REDACTED] - an intense verbal and physical altercation - is clearly seen on the video. It maintains that, even after another Ramp Agent attempts to intervene, Grievant continued to engage [REDACTED] multiple times and that credible witness statements describe the two combatants as "yelling and screaming," "shouting" and "grabbing." The Company points out that Grievant testified that, when she contacted the Tampa Police Department, officers told her that both [REDACTED] and [REDACTED] "could be presented some charges." (Tr. 74-75) It contends that Grievant's depiction of the altercation as one-sided, that is, all [REDACTED] fault, is merely an attempt to deflect from her role in the dispute.

The Company further argues that it has a legal, moral and fiduciary responsibility to provide a safe work environment and that it has consistently terminated employees for incidents of workplace violence, including both physical altercations and verbal threats. It asserts that its termination in the instant matter is consistent with its policy and supported by arbitral precedent

between the same Parties, including grievants ██████████ ██████████ (William L. McKee, Arb.) (2009), ██████████ ██████████ (Kathy Fragnoli, Arb.) (2011) and ██████████ (Thomas A. Cipolla, Arb.) (2017). SWA points out that, in the instant matter, the Union did not contend that it treated Grievant disparately.

The Employer argues, in addition, that Grievant also violated the policy requiring employees to cooperate in investigations by refusing to answer questions in the Fact-Finding meeting.

Finally, SWA argues that there are no circumstances that would mitigate its decision to terminate Grievant. It points out that Grievant was a nine-month employee with a below-average work record. It points out that Mr. Williams testified that Grievant, during her short tenure, displayed attitude and attendance issues and had continually struggled with baggage handling, perhaps the most fundamental aspect of her job. (Tr. 28-29)

For these reasons, the Employer urges that the grievance be denied.

**The Union** argues that the Company terminated Grievant from service without just cause. It contends that the Company's basis for terminating Grievant was that she engaged in a "fight," but that the incident was not a fight and that, in any case, ██████████ initiated the contact. It asserts that termination was unreasonable and excess.

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<sup>1</sup>In the ██████████ case, Arbitrator McKee upheld termination of an eight-year employee with no prior discipline, finding that a push or shove is akin to "striking another employee in anger" and a single instance is sufficient for termination.

<sup>2</sup>In the ██████████ case, Arbitrator Fragnoli upheld termination of a nine-year employee with no previous/active discipline who grabbed and shook a co-worker after they engaged in a heated discussion, finding that one instance of striking a co-worker provides sufficient basis for termination.

<sup>3</sup>In the ██████████ case, Arbitrator Cipolla upheld termination of a short-term employee, finding that verbal threats of violence toward a co-worker warranted termination.

TWU further argues that [REDACTED] [REDACTED] attacked Grievant by grabbing the collar of Grievant's rain slicker jacket, pushed her back and aggressively shoved her against a baggage cart. It maintains that Grievant never struck [REDACTED] but only tried to get [REDACTED] to release her. The Union contends that the incident was not a fight, that the video shows that Grievant never attempted to strike [REDACTED] [REDACTED] and that Grievant merely tried, unsuccessfully, to release herself from the grasp of her attacker. It concedes that, after Grievant was released, she should have just walked away to report the incident but contends that she was in shock and disbelief and, mistakenly, continued the verbal dialogue.

The Union concedes that Grievant only worked for the Company for nine months but argues that no amount of tenure could control the actions of another, hostile individual. It asserts that Grievant should be commended for taking the high ground by showing restraint and not physically retaliating against [REDACTED]. TWU maintains that her restraint should be considered a mitigating circumstance.

TWU also concedes that Grievant's 100-Day evaluation showed eight areas that needed improvement and two as unsatisfactory but points out that her 150-Day evaluation only showed two areas needing improvement and none as unsatisfactory. It maintains that, although the Comments/Discussion section of the 100-Day evaluation was very critical of her work, the same section of the later evaluation showed significant improvement. It points out that Mr. Williams testified that Grievant corrected her behavior and agreed that she was worth keeping as an employee. (Tr. 38 and 41)

The Union further argues, with respect to the Fact Finding meeting, that the Union took complete ownership in Grievant not answering all of the questions that she was asked. It contends that Mr. Williams testified that Grievant's Union representative told her not to answer the questions and that the practice at TPA station of directing employees not to answer questions has ceased. (Tr. 40-41)

Finally, TWU argues that, although the termination memorandum identifies numerous Basic Principles of Conduct that Grievant violated, it is telling that she was *not* charged with violating no. 18, that is, "Striking another Employee in a display of anger." It asserts, in addition, that, even though the Workplace Violence Prevention Policy expresses a "zero tolerance" policy, it does not state that a violation will warrant immediate termination.

The Union concedes that the Company has a responsibility to provide a safe work environment for its employees, but it maintains that, in the instant matter, Grievant's behavior is undeniably correctable and termination was excessive.

For all of these reasons, the Union urges that I sustain the grievance, rescind Grievant's termination and modify or remove the penalty, return her to work and make her whole in every way, including full seniority, all benefits and full back pay, including overtime pay that she could have received in accordance with her seniority.

#### **DISCUSSION AND ANALYSIS**

The burden of demonstrating just cause for Grievant's termination falls on the Company. For the reasons which follow, I am persuaded that the Company had just cause to discipline Grievant and that termination was the appropriate penalty.

#### **Rules of Conduct**

It is the Employer's right to establish and enforce rules of conduct, subject to the requirements that the rules must be reasonable and rationally related to a legitimate business objective and not in contravention of the collective bargaining agreement. The Company has developed an Employee Handbook which contains Basic Principles of Conduct for its employees. These Basic Principles require that employees remember that their conduct reflects on SWA and they must act accordingly (no. 2); that

coordination among co-workers is required to provide "harmonious working conditions" (no. 4); that use of threatening or abusive language or interference with co-workers or their work is restrictive (no. 8); that striking a co-worker "in a display of anger" warrants termination (no. 18); that conduct which is detrimental to the Company's interest including adverse conduct that reflects on it may be cause for immediate dismissal (no. 25); that fighting, abusive and disrespectful behavior to a co-worker is a violation (no. 27); and that failure to cooperate with fact-finding is also a violation (no. 34). The penalty for violating any of the Basic Principles may range from reprimand to discharge, "depending on the particular violation and the circumstances."

The Company has also developed a Workplace Violence Prevention Policy. That policy states that SWA maintains a "Zero Tolerance" policy and that a violation will subject the employee to disciplinary action, up to and including termination. It defines workplace violence to include "actions or words that endanger or harm another individual," specifically, "any acts of physical violence . . . or other threatening behavior," including "[m]aking threatening remarks, . . . or intimidating conduct" and "[a]ggressive or hostile behavior that creates a reasonable fear of injury."

It is the Employer's obligation to maintain a safe work place. The Employer is also entitled to ensure that employees behave in a manner to promote a productive and harmonious work environment. It is the obligation of employees to facilitate those objectives of safety, productivity and harmony.

It is undisputed that the rules allegedly violated by Grievant were reasonable and work-related. The evidence establishes that Grievant was well acquainted with these rules and I hold her to be responsible for complying with them.

## Merits

Article Two of the Parties' Agreement requires employees to comply with Company rules. The evidence clearly demonstrates, and I am persuaded, that, on May 2, 2019, Grievant violated a number of the Company's Basic Principles of Conduct and its Workplace Violence Prevention Policy.

The evidentiary record - particularly the witness statements and video - demonstrate that Grievant, at a minimum, was an equal participant if not the initiator of the altercation that evolved into aggressive pushing, shoving and shouting. Certainly Grievant did more than simply try to get ██████████ to release her. I find Grievant's explanation about who precipitated the incident unconvincing; Grievant initiated the dispute when she approached ██████████. Grievant testified that ██████████ struck her; however, the video shows that they were pushing and shoving each other and that, after ██████████ tried to separate them, they both ██████████ and Grievant - continued to push and shove him in order to get at each other. ██████████ wrote, and it is unrebutted, that, after he separated the two women, they continued to argue with each other. Grievant concedes that she continued the "verbal dialogue" after she was separated from ██████████. The incident clearly qualifies as workplace violence under the definitions provided in the Workplace Violence Prevention Policy and violates numerous of the Basic Principles of Conduct.

The airport tarmac is a dangerous place. The incident could have resulted in injury, damage to Company or customer property, interference with operations and/or injury to the Company's reputation.

The fact that, as the Union points out, the Company did not charge Grievant with violating Basic Principle no. 18 (striking a co-worker "in a display of anger") is of no consequence and, in any case, does not contravene the fact that Grievant engaged in other conduct that clearly violated other Basic Principles, such as using

threatening or abusive language or interference with co-workers (no. 8), conduct which was detrimental to the Company's interest (no. 25), and fighting, abusive and disrespectful behavior to a co-worker (no. 27). Although the Union emphasizes, and it is undisputed, that Grievant failed to answer questions during the Fact-Finding meeting because her Union rep told her not to do so, I note that her failure to cooperate during Fact-Finding was a minor factor in the Company's decision to discipline her and is *not* the basis for my conclusion that Grievant engaged in unacceptable conduct with respect to the actual incident.

I find that the Company had just cause to discipline Grievant and turn to consideration of the penalty.

### **Penalty**

The Parties' Agreement grants to Management the right to manage and direct the work force subject to, among other things, that termination of an employee must be for just cause. The Company's Basic Principles of Conduct provide that violation of any of the principles may be grounds for discharge, "depending on the particular violation and the circumstances." The Union contends essentially that, because [REDACTED] was the aggressor in the incident, the level of discipline imposed on Grievant should be mitigated to something less severe than discharge. I am not persuaded. As indicated, the evidence establishes Grievant's clear violation of Company policies and her equal culpability on the incident. Contrary to the Union's contention, Grievant did not take the high ground, demonstrate restraint or retreat when the opportunity was presented.

The Company policies provide for a range of penalties. Just cause requires consideration of mitigating circumstances. The evidence is that Grievant has less than a year of seniority with the Employer, with a below-average, albeit improving, work record. The Union did not suggest that Grievant's treatment was disparate; in any case, the Company has offered a number of cases where

employee conduct similar to Grievant's resulted in termination that was upheld at arbitration. No mitigating circumstances exist and I am not persuaded that a lesser penalty for Grievant's misconduct is justified.

Given the circumstances, Grievant's termination was not arbitrary or unreasonable.

### **Conclusion**

The Company has policies that clearly prohibit the conduct in which Grievant engaged. It cannot risk Grievant again engaging in the conduct she engaged in on May 2, 2019. I conclude that the Company met its burdens and hold that it had just cause to terminate Grievant. The Award so reflects.

### **A W A R D**

The Employer proved that it had just cause to terminate Grievant. The grievance is denied.

Issued this 14<sup>th</sup> day of October, 2019, at Clarksville, Maryland.

  
M. David Vaughn  
Arbitrator