ARBITRATION AWARD

IN THE MATTER OF ARBITRATION BETWEEN

SOUTHWEST AIRLINES COMPANY,	)	
	)	
COMPANY	)	
	)	**Issue: Discharge**
And	)	
	)	**Grievance No. BWI-R-0893/17**
	)	
	)	**Grievant:** [redacted]
TRANSPORT WORKERS UNION LOCAL UNION 555 AFL-CIO	)	
	)	
UNION		

DATE OF DISCHARGE:	April 4, 2017
DATE OF HEARING:	July 24, 2017
DATE OF CLOSING OF THE RECORD:	September 15, 2017
DATE OF DECISION AND AWARD:	September 27, 2017
APPEARANCES:	
COMPANY:	Vance R. Foster, Manager – Labor Relations
UNION:	Brian Smith, Grievance Specialist
ARBITRATOR:	Thomas A. Cipolla

I. BACKGROUND

Southwest Airlines Company (hereinafter "Company") and the Transport Workers Union of America, AFL-CIO Local 555 (hereinafter, "Union"), are parties to a collective bargaining agreement (or, "CBA") in force at all times relevant herein. The Union is the sole and exclusive bargaining agent for employees of the Company based in the United States, its territories and possessions who comprise the class and craft of Ramp, Operations, Provisioning and Freight Agents. [redacted] hereinafter, "Grievant" or "Claude") was employed by the Company as a Ramp Agent at Baltimore-Washington International Airport (or, "BWI"). As such, he is covered by the collective bargaining agreement in force.

The Grievant stated that he has worked for the Company for about five or six years, The advocate for the Union places his seniority at eight years and the Company indicated that he has been an employee for five years. The Grievant was terminated on April 4, 2017 for performing his job in a careless, negligent or unsatisfactory - specifically for his failure to report on time to terminating Flight 1389 on March 20, 2017. A Notice of Fact-Finding Results – Job Performance – Termination memorializes not only the termination for the cause noted hereinabove, but also indicates that the Grievant had received a Final Letter of Warning and 3 Unpaid Days Disciplinary Days Off for Attitude and Performance on or about May 24, 2016. The Union filed a timely grievance, and the matter went through the grievance procedure to arbitration.

A hearing was held on July 24, 2017 in a conference room at the Doubletree Inn at Love Field in Dallas. The parties were represented as indicated on the cover sheet. They made argument, examined and cross-examined witnesses, introduced documentary evidence, filed post-hearing briefs and otherwise presented their cases in full. A transcript of the hearing was made by certified court reporter. Finally, the Grievant was present during the entire hearing.

II. ISSUE

Was the Grievant discharged for just cause, and if not, what is the appropriate remedy?

III. RELEVANT DOCUMENTS

Excerpts from the Agreement, Joint Exhibit No. 1

ARTICLE TWO
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 TWENTY
GRIEVANCE/ SYSTEM BOARD/ARBITRATION
DISCIPLINE AND DISCHARGE

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.

I. **Retention.** All letters of reprimand or warning as well as discussion logs and any records of verbal counseling relating to performance and/or conduct (including supporting documentation), will be null and void and the letters of discipline shall be removed from an Employee's file after twelve (12) months of active status have elapsed from the date of such letter or discussion log or verbal counseling.

L. **Interpretation/Application of Agreement.** In the event of a grievance arising over the interpretation of, or application of, this Agreement, or in the event of disciplinary action other than discharge, the following steps shall apply. However, if the action involves discharge or a Union grievance concerning a change in Work Rules, it shall proceed to sub-paragraph 3, below. Decisions made pursuant to Steps 1 through 3, below, shall not constitute precedent of any kind unless agreed to, in writing, by the Union and the Company.

15. **Arbitration/Function and Jurisdiction.** The functions and jurisdiction of the Arbitrator shall be as fixed and limited by the Agreement. He shall have no power to change, add to, or delete its terms, and shall have jurisdiction only to determine issues involving the interpretation or application of this Agreement. Any matter coming before the Arbitrator, which is not within said 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 limitation 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, she/he may modify or remove the penalty.

Excerpts from Company Exhibit #5 – Ground Ops Manual Section 5.14 – Preplanning a Flight

5.14 Preplanning a Flight
Revised: 03/06/2015

The following guidelines are used to Lead the Gate Lead in preplanning the flight (refer to 5.3 T-Point for more information):

- Arrive at the appropriate gate no later than 10 minutes prior to the arrival of the aircraft.
- Set up the gate in advance.

Excerpts from Company Exhibit #7 – Grievant's Final Letter of Warning and 3 Unpaid Disciplinary Days Off (dated May 24, 2016)

A fact-finding meeting was held on Tuesday, May 17, 2016 to discuss your alleged incidents on Thursday May 05, 2016 and Saturday, May 07, 2016. Present at this meeting were you, TWU Representatives [redacted] and [redacted] Station Services lead T. J. Cameron, and Manager of Ramp and operation Brian Cunning.

After a thorough and complete investigation into this matter, and after review of the testimony and documents provided at the fact-finding, we have concluded that you did, Thursday, May 05, 2016, use profanity towards an Employee while on the phone with them and called back to reiterated *(sic)* the profanity to the same Employee. Also, on Saturday, May 07, 2016 you threw all the Ramp Agent Shift Trade Receipts and box into the trash. Such conduct is in violation of the Southwest Airlines Ground Operation Basic Principles of Conduct, including but not limited to, the following:

2. An Employee on duty and in uniform reflects the SWA 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 SWA, 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

On September 22, 2015 you received a Letter of Warning for Job Performance.

Based upon the above and because your actions, this letter will serve as a Final Letter of Warning and 3 Unpaid Disciplinary Days Off. These days will be served at a future date. Please be advised that the behavior that you have displayed will not be tolerated, any future violations of this nature will result in discipline, up to and including termination. 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.

IV. SUMMARY POSITIONS OF THE PARTIES

A. COMPANY

Southwest Airlines Co. ("Southwest" or "Company") had just cause to terminate [redacted] ("Grievant") due to his failure to satisfactorily perform his job duties as a BWI Ramp Agent during Flight 1369 while performing Gate Lead duties at gate A-11, on March 20, 2017. His conduct violated the Company's Basic Principles of Conduct and the Ground Operations Manual. Significantly, prior to the March 20th incident, he had already received a Final Letter of Warning with three unpaid disciplinary days off (DDO) due to his poor attitude and unacceptable job performance.

The final incident occurred on March 20, 2017, when the Grievant showed up more than 20 minutes late to his assigned gate. His tardiness negatively affected the Company's business operations, caused delays for the Company's customers, and required his coworkers to perform his duties.

The Grievant was well aware of his responsibilities under Southwest's Basic Principles of Conduct and Ground Operations' Procedures. After being hired, the Grievant was informed and properly trained on the Gate Lead rules and specific responsibilities.

As a result, the Company conducted a rigorous, fair, and thorough investigation, which included procuring/reviewing the video footage of the ground services performed at Gate A-11, gathering witness statements, and conducting a fact-finding meeting with the Grievant and his Union Representative. Ultimately, the Grievant admitted he was over 20 minutes late.

The Grievant's file contained significant and active discipline on the night in question. Job performance and attitude are very closely interconnected regarding how Ramp Agents conduct their jobs on a daily basis. How can a Ramp Agent perform his job well, if he performs the job with a poor attitude? The two are inextricably linked.

Many of the Union's comparatives should not be considered because they were settled on a non-precedent/non-referable basis. The Union also submitted arbitration rulings which are factually distinguishable from the Grievant's termination. What makes most of the rulings unhelpful is that the Company could not prove any and/or all of the job performance violations alleged in the respective termination letters. In the Grievant's case though, discipline was consistent with that of other, similarly situated ground operations employees.

During the hearing, much of the Union's arguments for disparate treatment of the Grievant centered on a false notion: the Arbitrator and Company must "silo" discipline issues/letters regarding issuing/evaluating discipline decision. According to the Union Advocate, there is no interconnectedness between job performance discipline, and discipline issues concerning attitude. This notion is simply inaccurate to say the least.

Therefore it is clear that after being given the contractual benefit of a fact-finding meeting, during which the Grievant admitted to being late for his aforementioned flight that the relevant facts are not in dispute. The Grievant, a five-year employee, knew his job duties. After multiple incidents of poor attitude and unsatisfactory job performance, the Company issued a Final Letter of Warning. Despite the Company's warning, he failed to improve his behavior. As a result, the Company terminated the Grievant with just cause April 4, 2017.

B. UNION

The Company made some bold statements in their opening. The Company admitted that it does not terminate or even discipline for being late to a flight. If it doesn't warrant discipline and he has no similar discipline, how could they terminate [redacted]

The discipline in the Grievant's file is not unique. The Company conceded in their opening they do not usually terminate for this. This is also proven in Union Exhibits 2, 3 and 4. These exhibits contain many examples of what employees normally get for the first time being late to a flight. Many had several instances of being late to flights.

The Company has terminated an employee for missing a flight. There was one arbitration decision where the employee stayed terminated after arbitration for missing a flight. The Company would not enter this decision as an exhibit and the Union did enter it as Union Exhibit 1(BWI-R-1954/16[redacted]. This decision is unique. [redacted] had several discipline letters in his file. One Letter of Warning for missing flights, and a Final Letter of Warning with days off. The unique part of this was that [redacted] was on a Last Chance Agreement (or, "LCA"). [redacted] was not reinstated because he violated the LCA. This is stated in the decision. [redacted] had engaged in the same misconduct a few months prior and that resulted in his termination.

Did the Company have just cause to terminate this Grievant in this matter? The answer to this question is no. The Company could have handed out a myriad of levels of discipline but chose termination. The Grievant here had one unrelated discipline letter in his file. This letter was almost eleven months old. This letter does not even contain the same Basic Rules of Conduct violations that are listed in his termination letter.

The Company wants us to believe that since the Grievant had unrelated discipline in his file at the time, the Company felt the offense was severe enough to jump several steps of discipline and that all subsequent discipline should make the same jump, regardless of how small the violation may be. This is an abuse of managerial discretion.

Was the Grievant terminated for just cause? The answer must be no. He must be given the ability to correct the behavior. He had no discipline in his file for being late to a flight. He showed up on time to a flight that came in early. Does he have some responsibility? Yes, and he took responsibility for it. He should not be given the ultimate penalty of discharge.

The Grievant is a vested eight-year employee. He has only one letter in his file, and that letter was almost eleven months old. That means it would have been removed at 12 months per the CBA. [redacted] should be reinstated as well, but his record and years of service should mitigate the level of discipline and the back pay that he did not receive.

The Company failed to prove that it had just cause to terminate the Grievant. "Just because" is not a standard of "just cause." The Grievant should not be terminated for the relativity minor offence of being late to a flight for the first time. The Union has proved with a great weight of evidence (*See*, Union Exhibit #4) that employees receive minor discipline for being late to a flight. The Company said it in their opening. The Manager testified to it. The Union proved with a great weight of evidence that employees with multiple letters of discipline for being late or missing flights (*See*, Union Exhibits 3 and 4) some with Final Letters of Warning with and without suspension days, were not terminated. The Union proved with a great weight of evidence that employees were terminated for seemingly minor offences but had extensive discipline in their file (*See*, Union Exhibit #1) were returned to work with the appropriate discipline if any by various arbitrators. The Company has not met its burden of proof. The Grievant was not terminated for just cause.

The Union, the Grievant's family, and the Grievant respectfully ask that this grievance be sustained and that the Grievant be reinstated to his position as a Southwest Airlines Ramp agent in Baltimore and to be made whole in every way.

V. DISCUSSION AND DECISION

(Some of the evidence and/or some of the argument may be brief and some may not be set forth where it is not necessary for the disposition of the case.)

There is no substantive dispute as to the operative facts of this case. On March 20, 2017, the Grievant did not report on time to Gate A-11 at BWI for terminating Flight 1369. This was his assignment and he was aware of it. It seems that the Grievant went to see his supervisor more than once that evening and spent some time with his supervisor trying to get early leave without pay. This appears to be the reason he was late. There is also sufficient evidence to conclude that the Grievant knew or should have known from his training and experience with the Company that the Ground Ops Manual requires that a Gate Lead like himself arrive at the appropriate gate no later than 10 minutes prior to the arrival of the plane/flight. Finally, the prior discipline noted hereinabove was part of the Grievant's record at the time and was "active" - that is to say it was not "null and void" and had not been removed from the Grievant's file because twelve (12) months had not passed since its issuance. (*See*, Article Twenty, Section I of the CBA.)

The Union pointed out in its brief (and introduced evidence at the hearing to back it up) that employees are usually not terminated for being late to work a Flight. The Company also admitted at the hearing, that an employee is usually not terminated for a single incidence of being late. The instant case then turns upon whether or not the Grievant's prior disciplinary record is enough to push this incident to a dischargeable offense.

The parties' positions have been set forth earlier in the Award. Both sides have provided the arbitrator with a plethora of cases and arbitral authority (much of which is the product of prior arbitrations between the parties) to consider in rendering his decision. From the documents tendered by both sides, it is apparent that many other arbitrators have spent a considerable amount of time and numerous pages to analyze other situations similar to the one before me. Therefore, I am not going to spend a great deal of time or space to do the same. In general, I would suggest that we are all on the same page but may not have sung the exactly the same lyrics in our decisions.

One of the notions of "just cause" is that an employee know or should know (either by the nature of the offense committed or by prior discipline and counselling) the consequences of his or her subsequent actions which violate rules and policies of the employer. In the instant case, there is no indication that the Grievant knew or should have known he would be terminated for being late to the flight on March 20, 2017. It appears that no one else has been terminated for being late for a flight on one occasion. The only exception I see was where an employee who was working under a "last chance agreement" which contained among other things a notation of prior discipline for missing a flight. The Grievant here was not working under a LCA.

Looking at the Grievant's Final Warning issued in May of 2016, there is absolutely no mention of the consequences of being late for a flight or late for anything else. There is no mention that he was being disciplined for being late to a gate at that time. And finally, there is no evidence that he was late to a flight in the past.

Furthermore, the May 2016 discipline specifically states that he was disciplined then for his

> "use (of) profanity towards an Employee while on the phone with them and called back to reiterated *(sic)* the profanity to the same Employee; and for "(throwing) all the Ramp Agent Shift Trade Receipts and box into the trash."

And, he was warned

> "that the behavior that you have displayed will not be tolerated, any future violations of this nature will result in discipline, up to and including termination. "

The Grievant's behavior that triggered his discipline in May of 2016 has nothing to do with his being late for a flight. He used profanity with a coworker and tore up and threw away some Ramp Agent Shift Trade receipts. It appears to me that these offenses were of a more serious nature and that is why he received some time off without pay.

He also was warned in this discipline that "future violations of this nature" could lead to termination. Even though the written part of that prior discipline makes reference to the Grievant violating Item 2 of the Basic Rules of Conduct which includes references to attitude, the discipline does not say he could be or would be automatically terminated for any violation involving a "bad attitude" specifically or even impliedly. Furthermore, tardiness does not necessarily indicate a "bad attitude."

Of course, if the Grievant had committed a more serious offense than being late for a flight or had repeated the actions that led to the prior discipline, the discipline imposed could have been more serious; and, after the usual scrutiny of the severity of the discipline, serious discipline or even termination might have been deemed acceptable. However, that is not the case here. The Grievant was late for a flight – a relatively minor offense. It was not a repeated offense which might justify escalating the discipline under notions of "progressive discipline."

I understand the Company's position that in its opinion the Grievant being late for a terminating flight on March 20, 2017 was another example of the Grievant's "poor attitude;" that it imposed a heavier burden on the Grievant's coworkers that evening; that it may have delayed passengers deplaning and/or securing their luggage; and, that this may reflect poorly on the Company. On the other hand, as acknowledged by all, this offense appears not to be terminable offense in most instances and I cannot overlook this when I am looking at "just cause" for this termination. I just do not see that the Grievant had any reason to believe he would be fired based upon his actions that day and/or in conjunction with his previous discipline some 10 months before for entirely different reasons.

In conclusion, for all the reasons stated herein, the Company did not have "just cause" to terminate the Grievant. There is "just cause" though for some discipline as the Grievant was by all accounts late and he violated his Gate Lead duty to be on time.

VI. AWARD

Based upon the foregoing, I find that the Company did not have just cause to terminate the Grievant and therefore, the grievance is sustained. The termination is to be converted to a letter of warning. The Grievant is to be returned to his job with full back pay and benefits less interim earnings.

Since the grievance is sustained, according to the Collective Bargaining Agreement the Company is to pay the arbitrator's fee and expenses.

Date: September 27, 2017

Thomas A. Cipolla, Arbitrator