

IN THE MATTER OF)
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)
SOUTHWEST AIRLINES CO.)
)
and)
)
TRANSPORT WORKERS UNION OF)
AMERICA, AFL-CIO, LOCAL 555)

Case No. HOU-O-2194/18

Med-arb

Before Matthew M. Franckiewicz, Arbitrator

Discussion

On July 25, 2018, J. Martin Seafood, a major Southwest shipper, brought five pallets with boxes of live crabs to the Southwest warehouse at Houston. Grievant [REDACTED], an employee with over 20 years service, brought the pallets into the warehouse by forklift, and prepared all the paperwork associated with them. Grievant [REDACTED] placed the pallets inside the warehouse, roughly in line from the outer wall toward the middle of the warehouse. For convenience, the Parties have referred to the pallets as #1 through #5, #1 being the pallet closest to the middle of the warehouse, and #5 being the one closest to the exterior wall, although there was no such numbering on the pallets themselves.

There was no issue regarding pallets #3 and #4. Pallet #1 had 15 boxes of crabs bound for BWI. Pallet #2 had 8 boxes of crabs, also bound for BWI. Pallet #5 had 15 boxes of crabs bound for LAX. All the boxes on all the pallets were the identical size.

As the Grievant was preparing the paperwork, co-worker [REDACTED], who apparently has a reputation for being a very helpful individual, came by and asked [REDACTED] if he could help. By that time [REDACTED] had prepared the labels for the boxes on pallet #5 for LAX. (Since the numbering used here was solely for ease of understanding at the arbitration hearing and did not appear anywhere on the pallets themselves, there was no reason for Grievant [REDACTED] to prepare the labels in any particular order.)

Although customers do not typically affix NFG (next flight guaranteed) stickers on their shipments, J. Martin had apparently obtained these stickers and had placed them on many if not all of the boxes on pallet #1, and apparently on at least some of the boxes on pallet #2. Eventually NFG stickers were placed on all the boxes on all the pallets.

Grievant [REDACTED] gave the labels for pallet #5 to [REDACTED], but apparently did not point out which pallet these were for. [REDACTED] noted that pallet #1 had the right number of boxes (15), and NFG stickers, and placed the labels on the pallet #1 boxes. (Each box gets its own label.). Ultimately this meant that the crabs on this pallet intended for BWI went to LAX.

Shortly thereafter, [REDACTED] (correctly) placed the BWI labels on the 8 boxes on pallet #2. Noting that pallet #5 had 15 boxes, he placed BWI labels on these boxes as well. But the 15 boxes on pallet #5 were intended for LAX rather than BWI.

After the crabs arrived, J. Martin's customers complained, because the customer who wanted male crabs received female crabs and vice versa. (Male crabs are larger and heavier.) J. Martin in turn complained to Southwest, and Southwest refunded to J. Martin the shipping charge of approximately \$1600 as well as an additional \$1000 in compensation.

On July 31, Southwest issued a Letter of Instruction to the Grievant, citing Basic Principle of Conduct #14. There was some dispute, which I need not resolve, as to whether [REDACTED] was given a discussion log, but it is clear that he was not issued any formal discipline.

The Union does not dispute that Grievant [REDACTED] made a mistake by placing the wrong labels on some of the boxes. Nor does it claim that a Letter of Instruction is disproportionately harsh discipline for such a mistake. Its primary contention is that [REDACTED] made the same mistake of placing the wrong labels on boxes, and that [REDACTED] should not have been disciplined to any greater extent than [REDACTED].

[REDACTED] was not disciplined, and did not file a grievance. There is no [REDACTED] grievance before me, and I have no jurisdiction to determine whether there was just cause to discipline him. Instead, the issue before me is whether [REDACTED] could not be disciplined unless [REDACTED] was also disciplined.

There is no question that [REDACTED] made a mistake on July 25, 2018, a mistake that was uncharacteristic for him and a mistake that probably would not have happened but for the coincidence that there were an identical number of identical sized boxes on pallet #1 and pallet #5 though headed for different destinations. But it was a mistake nonetheless, and a mistake that cost Southwest a significant amount of money. So if [REDACTED] were not in the picture at all, the Company would have just cause to issue a Letter of Instruction, the lowest level of discipline, to [REDACTED] despite his lengthy service.

The question therefore becomes whether [REDACTED]'s actual involvement was such that it would constitute disparate treatment to discipline [REDACTED] without also disciplining [REDACTED]. For the reasons set forth below, I conclude otherwise.

First, the shipment involved was not part of [REDACTED]'s responsibilities. He volunteered to help, to do additional work that he could just as easily have avoided. To discipline such a "Good Samaritan" who makes a mistake could have the undesirable effect of deterring employees from volunteering, since by doing so they would have something to lose and nothing to gain.

More importantly, [REDACTED] and [REDACTED] level of responsibility for the error were different. Grievant [REDACTED] was in charge of this shipment, and he printed all the paperwork. At the hearing [REDACTED] acknowledged on cross examination that he should not have let [REDACTED] label the boxes. At the very least, he should have insured that [REDACTED] knew which boxes the labels (which [REDACTED] not [REDACTED] had printed) were intended for. Instead [REDACTED] let [REDACTED] assume or guess, and as it happened, [REDACTED] assumed incorrectly. The fact that [REDACTED] volunteered to help did not relieve [REDACTED] of primary responsibility to see that his shipment went where it was supposed to go.

For these reasons I conclude that the grievance should be denied.

Award

The grievance is denied.

Issued January 28, 2019

Matthew M. Franchewing