

In the Matter of the Arbitration Between:

Southwest Airlines

and

Its Ramp, Provisioning and Operations Agents  
(ROPA)

FMCS 89-22561

An arbitration hearing was held October 10, 1989 in accordance with Article 20 of the agreement between the parties. The parties agreed that the grievance was properly before this arbitrator.

Appearances

For the Company: John Chaussee, Esq., Attorney  
Ruth Ann Lasiter, Dir., Staff Serv.

For ROPA: Martin Melliet, President  
[REDACTED], Grievant

Question at Issue

Was the termination of employment for [REDACTED] for just cause?

Background

The Company has a published policy to deter attendance offenders. The policy is described in Article 24 of its Agreement with Ramp, Provisioning and Operations Agents, stating:

"The Company may terminate up to two (2) percent of the employees covered by this Agreement who are the worst attendance offenders each calendar year . . . "

The Company year-end evaluation for 1988 indicated that Mr. [REDACTED] had 177.9 hours of unapproved absences and that he was tardy 13 times. This record ranked [REDACTED] in the top ten of worst attendance offenders. In fact, he was the eighth (8th) worse. Management rechecked his record with his L.A. duty station. His unapproved absence record was re-evaluated and reported at 216 hours of unapproved absences, and his ranking was raised to the fifth worse. Mr. [REDACTED] was considered in the top two (2) percent with the worse attendance and, after review, his employment was terminated.

#### Company Position

The Company maintains that the policy of termination for the worst attendance offenders was clear, promulgated, and in effect since 1981.

Mr. [REDACTED] had been repeatedly counseled -- two written warnings were placed in his file in February of 1988. The Company made reference to a performance evaluation on July 18, 1988, where Grievant was warned "improvements must be shown or it could jeopardize employment."

The Company contends it carefully reviewed Grievant's record, including his performance in January, February and March 1989. Finding that his service had seriously deteriorated in 1988 and that no improvement was in sight,

he was terminated in accordance with the Company's published policy.

ROPA Position

ROPA contends that Grievant was not aware of Company policy or made aware that his service was jeopardizing his employment. On March 31, 1989, Grievant outlined his position in a letter to management.

"In accordance with company policy, I am hereby submitting my response to my discharge from Southwest Airlines on Tuesday, March 28, 1989. I hope to prove that the reason for my termination is inaccurate and that the correct procedure for such termination was ignored.

"On March 28th I was given a letter from Station Manager, Bruce Bennet, indicating my discharge from the company due to excessive absence. The letter claims that I have a total of 240.90 hours of 'unapproved absence' in 1988. As I have been with Southwest since August of 1986, I am entitled to 8.0 hours/month of accrued sick leave. This accounts for 96.0 of those 240.90 hours, leaving only 144.0 hours in question. As a disciplinary procedure, I was required by the company to take three days off (without pay), explaining yet another 24 hours. To include these hours in 'unapproved absence' would be penalizing me twice for the same action. How can these hours be considered 'unapproved' if they were assigned by the company?

"When reviewing the remaining 120.0 hours, I believe you must also consider the overtime I have worked for Southwest. Note Article Six of the Employee Handbook entitled 'Hours of Service':

- A. Time worked in any tour of duty including holidays and overtime shall be considered as work performed on the day during which the employee's regular shift began.

"In 1988, I put in 305.0 hours over and above those regularly scheduled for me. I feel this more than compensates for the hours missed and shows my dedication to the company and sincere desire to perform my job well."

"In addition to refuting the accuracy of the hours deemed unapproved, I must also take issue with the manner in which I was discharged. According to Article 6.5.4 of the Corporate Handbook entitled 'Progressive Discipline for Excessive Absenteeism,' after the sixth incident or ninth day absent, the respective manager will counsel the employee and file a written note in the employee's personal file regarding the conversation. Upon the next incident, another counseling session must occur, along with a formal letter to be placed in the employee's file. Neither of these two procedures were followed. Thus, I had no warning of the severity of my absenteeism and continued to work unaware that my job was in jeopardy.

"I hope that you will consider the points I have presented in this letter, keeping in mind that prior to 1988 my attendance was very good. I feel that the hours calculated for 1989 is incorrect -- substantially less than reported. Regardless of the accuracy of this number, management did not follow company policy by ignoring standard procedures in my termination. Therefore, I believe that I should be immediately reinstated."

Grievant attests that he never saw nor signed the performance evaluation of July 18, 1988. The Union concludes that the two (2) percent policy is hit and miss and borders on arbitrary and capricious.

Grievant further attests that personal problems were distracting his performance and were mitigating. He asks to be reinstated with back pay and all rights restored.

#### Opinion

Company policy has been clear and unambiguous. The Company reserved the right to terminate up to two (2) percent of the employees who are the worst attendance offenders. Mr. [REDACTED] was among the top two percent.

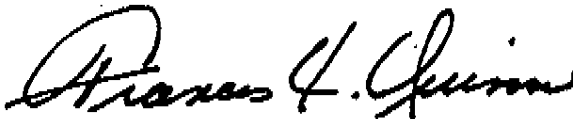
Mr. [REDACTED] was troubled. He never took the time nor the opportunity to consult about his troubled condition or the causes of his deteriorating service.

The record indicates his service was sloppy. He was counseled and given a poor performance evaluation. These facts were not mysterious. If the Grievant wasn't aware of management's concern about his performance, it is because he chose not to be aware or responsible. Management clearly and fairly evaluated his worsening record. Mr. [REDACTED] did not take the means at his disposal to handle his problems or his assignments.

Based on the record and the testimony evidenced at the hearing of October 10, 1989, we can only conclude that the question at issue must be answered in the affirmative.

Award

Grievance denied.

  
Francis X. Quinn

Tulsa, Oklahoma  
October 20, 1989