

**Regular Arbitration Panel**

**In the Matter of Arbitration**

between

**Southwest Airlines, Co.**

and

**Transport Workers Union, Local 555**

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**Grievant:** [REDACTED]

**Case No.:** PHX-R-1827/19

**Before: Kathy Fragnoli, Esq.**

**Appearances:**

**For the Employer:** Adria Jetton, Esq.  
**For the Union:** Jerry McCrummen, Vice President

**Place of Hearing** Dallas, TX

**Date of Hearing:** October 30, 2019

**Close of Hearing:** December 16, 2019

**Date of Award:** January 9, 2019

**Type of Grievance:** Contract

**Award Summary**

The grievance is sustained. The Union has proven by a preponderance of evidence that moving a cart of misplaced baggage is considered covered work, and that the contract was violated when a ramp supervisor moved the cart of misplaced baggage to another gate instead of a ramp agent. The parties have agreed to craft a remedy in this case, should the grievance be sustained.

  
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Kathy Fragnoli, J.D.  
Arbitrator

## Issue

The parties stipulated to the following issue statement:

Whether the Contract was properly applied and interpreted correctly?

Upon review of the evidence presented, the Arbitrator has framed the issue more specifically as follows:

1. Whether moving a cart of misplaced baggage is considered covered work?
2. If so, whether the Company violated the Contract when a ramp supervisor moved the cart of misplaced baggage to another gate instead of a ramp agent?

## Background

On June 28, 2019, Southwest Airlines Ramp Supervisor, Rodolfo Contreras, was driving a tug through what is known as a “zone,” where planes are loaded and unloaded with baggage, freight and other cargo. While driving, Contreras discovered approximately 15 to 20 bags in a cart that was at the wrong gate.

According to hearing testimony, Ramp Agent [REDACTED] observed Contreras pulling the cart with his tug as Contreras passed by the Union office. [REDACTED] called Contreras via radio and asked him what he was doing, to which Contreras allegedly responded that he was moving the bags to D-7 for the Portland flight. The Union filed a grievance claiming that Contreras’ actions constituted a violation of Articles Two and Five of the parties’ CBA because he performed covered work and replaced an agent.

Although the parties disagree as to whether Contreras violated the Collective Bargaining Agreement, they stipulated to the following:

The parties agree that there is no question that the supervisor did the work or movement of the bags from C-16 to D-7. There was a video provided to the Union that shows approximately 15 to 20 bags being moved. The entire movement of the bags was for 1 minute and 48 seconds. There was no irregular operation and staffing levels were normal. The disagreement is whether it is a violation of covered work. If the determination is that it was a covered work violation, the parties have agreed to work out the proper amount of OT [overtime], at the applicable rate to be paid to the proper agent for an OT bypass.

In addition to key contract provisions from the 2001-2006 CBA and the current CBA, key evidence presented during the hearing includes:

- A July 30, 2019, handwritten statement by Contreras which states that he moved the bags from C-16 to D-7 because he “misread the tags and thought the flight was leaving soon.” Contreras’ statement does not state to which flight he thought the bags belonged.
- A video, which shows that it took one minute, forty-eight seconds to hook up a cart to a tug at Gate C-16 and drive it to Gate D-7.
- A June 28, 2019 OTIS Report, which shows the arrival and departure times of all Inbound and Outbound flights, as well as the flights’ assigned gates. Notably, at 10:08 a.m., Flight 908 to Pittsburgh departed out of Gate D-7. The next flight out of Gate D-7 was Flight 2275 to Portland, scheduled to depart at 11:50 a.m. Flight paperwork, such as Dispatch Reports and Loading Summaries provided by the Union corroborate the OTIS Report.
- A June 28, 2019 Duty Roster that shows the ramp agents on duty that day.

Briefly stated, the parties’ positions are as follows. According to Southwest: 1) Contreras moved the bags because he misread the baggage tags and thought they were supposed to be on a plane that was departing soon; 2) Moving misplaced baggage is not covered work because it was not subject to a specific assignment, or work historically and exclusively performed by ramp agents; 3) Even if moving the misplaced baggage is covered work, movement of the bags by Contreras is *de minimus* in nature; and 4) No covered employee was harmed.

Conversely, the Union contends that: 1) Testimonial and video evidence shows the bags were not moved as a result of an error; 2) Moving baggage to and from aircraft is covered work because it is a duty exclusively assigned to ramp agents; 3) Moving 15-20 bags is not *de minimus* in nature; and 4) Performance of covered work by non-bargaining unit members threatens job security.

Both parties cited the following grievances, which were of a similar nature, in support of their positions. In *TWA-ALL-1000/09*, a 2009 grievance involving, among other issues, loading and unloading a belt, Arbitrator John Barnard held that the addition of the term “assist” in the 2008 CBA [and other terms, such as “direct, train, evaluate agent performance and support the operation by managing and directing the workforce”], “effectively modified Article 2.B by spelling out the supervisor’s role in the performance of covered work.” He further held that, “if a supervisor works alone loading or unloading the belt without the assistance of an agent for a good portion of the turn, such would be a violation of the agreement.”

In ██████ v. *Southwest Airlines, Co.* (2015), a customer service manager and a customer service supervisor tagged seven bags in a jetway, a task that took approximately three minutes to perform. Arbitrator Marvin Hill found that “absent any willful and flagrant attempt to undermine a bargaining unit position, and given the length of time at issue, along with the practice indicating that the responsibility had been ‘shared’ by numerous job classifications...the Company did not violate the contract.”

In ██████ v. *Southwest Airlines, Co.* (2016), a supervisor used a tug to move two empty carts away from the area where a plane was being loaded to an empty wall to tidy up the area. The Union argued the supervisor violated the contract by performing covered work. According to the Union, under the CBA, all power equipment used in the operation is covered work to be performed by covered employees. Arbitrator Neumeier disagreed and found that a supervisor moving two empty carts approximately 30 feet more than the length of an aircraft was not a covered work violation for the following reasons. First, she held that it would be difficult to find that the use of power equipment is solely limited to ramp agents because other classifications use power equipment as well. Second, Arbitrator Neumeier found that the work performed by the supervisor was not subject to a specific assignment—it could have been left undone, or it could have been performed by any agent in the area. Arbitrator Neumeier stressed that “more importantly...there was no evidence that [the supervisor] was attempting to undermine or supplant the work of an agent, or...to replace a covered employee.” In denying the grievance, Arbitrator Neumeier further added that it was “certain that no employee would have been called out to perform this work.”

### **Relevant Contract Language**

2001-2006 Collective Bargaining Agreement:

#### **ARTICLE TWO SCOPE OF AGREEMENT**

**B. Covered Employees.** This Agreement extends to and covers all Employees in the classifications described in Article Five who normally and regularly spend a majority of their work time in the performance of duties described in Article Five. Supervisors are not covered by this Agreement but may continue to perform covered work while on duty. A supervisor’s schedule may not be altered to prevent payment of overtime to a covered Employee, and a supervisor may not accept an overtime assignment if covered Employees are available for voluntary overtime assignments.

Current Collective Bargaining Agreement:

**ARTICLE TWO  
SCOPE OF AGREEMENT**

**B. Covered Employees.** This Agreement extends to and covers all Employees in the classifications described in Article Five who normally and regularly spend a majority of their work time in the performance of duties described in Article Five. Supervisors are not covered by this Agreement but may continue to perform covered work while on duty, **with the understanding that the intent is for a supervisor to assist, direct, train, evaluate agent performance and support the operation by managing and directing the workforce. A supervisor may not replace any covered Employee or cover a scheduled line.** A supervisor's schedule may not be altered to prevent payment of overtime to a covered Employee, and a supervisor may not accept an overtime assignment if covered Employees are available for voluntary overtime assignments. (**Bolded** language reflects new language added in 2008.)

**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 FIVE  
CLASSIFICATIONS**

**SECTION ONE  
RAMP AGENT/PROVISIONING AGENT**

The work of Ramp, and Provisioning Agents includes the functions which have been historically performed by such agents at Southwest Airlines stations and includes, but is not limited to, any or all of the following work covered under this specific labor contract. Agents required to perform such duties must be current and qualified within that classification.

**B.** Transports cargo to and from aircraft, including from the Company to other carriers.

**C.** Loads and unloads the cargo compartment of the aircraft with cargo (such as Customers' baggage, air freight, air mail, ballast, and Company materials) according to a predetermined plan received either electronically or manually from an Operations Agent. Submits, either electronically or manually, a Cargo Bin Loading Slip (CBLS) to an Operations Agent.

**O.** Works according to Company regulations and procedures and instructions from supervisors issued in accordance with this Agreement.

**P.** As qualified, operates all power and other ground equipment (including push back tugs) assigned by the Company to complete its airline operations.

**Position of the Employer**

Southwest contends that on June 28, 2019, Contreras came upon a cart of 15-20 bags at Gate C-16 when he misread the tags and thought the bags should be on a flight that was leaving soon for

Pittsburgh. Because he thought time was of the essence, Contreras hooked up the cart to his tug and drove the bags to Gate D-7. The task took one minute, forty-eight seconds to complete.

Southwest argues the Union has not proven by a preponderance of evidence that Contreras' moving the cart from one gate to another constituted covered work, or that moving a single cart of bags placed at the wrong gate was a duty historically performed by ramp agents, or assigned to a covered member on the day at issue. In fact, Southwest contends the Union was unable to identify a specific bargaining unit member responsible for moving bags that were dropped at the wrong gate, even though up to 49 ramp agents were on duty. In support, Southwest cites testimony of General Counsel Labor Manager, Phil Stachowski, who stated:

“Nobody [was] specifically on the schedule to move bags that have been dropped at the wrong gate.” (Tr. 65:22-23.)

In addition, Southwest argues that even though the Union suggested it may have been the responsibility of a “transfer driver” to move the cart, the Union provided nothing more than conjecture that the bags at issue were, in fact, “transfer bags.” “Transfer bags,” according to Stachowski’s testimony, are “bags that are downloaded off of an aircraft...and move[d] to the flights where [passengers] are transferring to.” (Tr. 65: 16-21.)

Southwest also contends that no contract violation occurred according to the [REDACTED] and [REDACTED] arbitration awards. In [REDACTED] Arbitrator Hill noted four guiding principles to determine whether a covered work violation occurred. First, “was what happened an attempt by the Company to undermine the work of the [ramp] agent?” Second, was the work done “repeatedly in an effort to undermine or supplant the work of a [ramp] agent?” Third, was this comparable to the “helping hand” scenarios often litigated in the arbitral forum? Fourth, was the Grievant “in any way harmed, economically or otherwise?” According to the Company, the Union must provide evidence of an intent to undermine or supplant the work of a ramp agent, which it did not do.

Similarly, Southwest argues the Union did not establish that Contreras’ action replaced an agent or harmed any agent. There were 130 ramp agents on duty that day, 49 of which were assigned to a tug. Southwest contends that any one of them could have moved the cart. Moreover, with the number of ramp agents available, Southwest stated that no covered employee was harmed because it would not have called in an agent for overtime to move the cart.

Even if moving the cart is considered covered work, then any violation of the CBA should be disregarded under the *de minimus* principle. According to the Company, in [REDACTED] Arbitrator Hill found no contract violation under the *de minimus* principle, “where the work was of

insignificant nature and short duration or where there were no measurable damages.” Here, Southwest argues that moving the cart of bags was very short in duration—less than two minutes—and resulted in no damage to any covered employee. Moving the cart took even less time than the challenged activity in ██████ which took less than three minutes.

Finally, the Company disagrees with the Union’s attempt to draw focus on the number of bags moved instead of the amount of time it took to move the cart in determining whether the challenged activity was *de minimus* in nature. Consistent with the ██████ decision, the length of time it took to complete the activity is paramount in determining whether the action was *de minimus*.

### **Position of the Union**

According to the Union, movement of bags between aircraft is the exclusive job of a ramp agent, which is protected and covered work defined in Article Five of the CBA. Article Five, Section B, specifically spells out that one of the duties performed by ramp agents is to “transport cargo to and from aircraft, including from the Company to other carriers.” The Union asserts that evidence exists which supports the view that moving bags is the exclusive duty of a ramp agent, such as the fact that employees are required to bid on driver positions, whose sole purpose is to get the bags to the aircraft. When Contreras moved the cart of 15-20 bags, the Union contends that he replaced a ramp agent who should have performed the work.

The Union rejects the assertion that Contreras mistakenly moved the bags because he thought they were intended for a soon-to-depart Pittsburgh flight. First and foremost, the Union contends that Contreras told ██████ that he was moving the bags to the Portland flight (which did not depart until 11:50 a.m.—more than 90 minutes later).<sup>1</sup>

Q: What did you observe?

██████ I observed the ramp supervisor, Rodolfo, dragging a tug connected with cart bags and he was driving right by our union office.

Q: Can you describe how you saw him?

██████ So there is a window that faces the ramp in our office, and we eat lunch right there. We have our computer. And I was sitting here eating lunch, and he just came driving by...I grabbed the radio right away. And I said, “Hey, Sup, what have you got?” And he said, “I have Portland bags...” And I said, “Well, what are you doing?” And he said...”I’m taking them from Charlie 16 to Delta 7.” And when I looked at the computer, it was 10:08.

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<sup>1</sup> (Tr. 22:11-21.)

Q: Was anybody else in there with you?

██████████ Another alternate rep, ██████████

This incident was confirmed by Lav Truck Driver, ██████████.<sup>2</sup>

Q: Did you observe the incident?

██████████ I did.

Q: Were you in the room when Vic made the radio call?

██████████: I was. I was sitting just to the side of him.

Q: Can you tell us what you heard?

██████████: He asked—on the radio, he asked Supervisor Contreras what he was doing. And he said, “I’m moving these Portland bags from Charlie 16 to Delta 7.”

Q: So, he specifically said Portland bags?

██████████ He did.

Second, the Union points out that the Pittsburgh flight had already departed when Contreras and ██████████ spoke. Thus, it is doubtful that Contreras “mistakenly” moved the bags to Gate D-7.

The Union also rejects the Company’s argument that Contreras did not violate the contract because he did not intend to replace a ramp agent. As previously mentioned, Contreras told Grievant via radio they were Portland bags. The Union points out that the Portland flight was not scheduled to depart for approximately one hour and 40 minutes. This means, according to the Union, that Contreras had time to find a covered employee to perform the work rather than perform the work himself. According to the Union, over 30 drivers were assigned to move bags on the day in question—any one of whom could have moved the bags.

As a supervisor, the Union contends that Article Two, Section B, restricts Contreras from performing covered work unless he was “directing, assisting, training, evaluating agent performance, or supporting operations by managing and directing the workforce.” As background, the Union explains that “significant and meaningful change to the verbiage” of Article Two, Section B, occurred after the 2001-2006 CBA expired, which specifically delineated the circumstances under which a supervisor is permitted to perform covered work. Under the old 2001-2006 CBA, “supervisors...not covered by the Agreement...may continue to perform covered work while on duty.” Whereas, additional language negotiated in the 2008 CBA states:

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<sup>2</sup> (Tr. 38:7-39:5.)

Supervisors are not covered by this Agreement but may continue to perform covered work while on duty, **with the understanding that the intent is for a supervisor to assist, direct, train, evaluate agent performance and support the operation by managing and directing the workforce. A supervisor may not replace any covered Employee or cover a scheduled line.**

In a 2009 grievance, Arbitrator John Barnard held that modification of the provision to include the word, “assist,” effectively defined one of several situations in which a supervisor could perform covered work. According to the Union, Contreras was not “directing, assisting, training, evaluating agent performance, or supporting operations by managing and directing the workforce” when he hooked up the cart and moved 15-20 bags to a different gate. Rather, he decided to perform the work of a ramp agent himself, which was a violation of the CBA.

The Union refutes Southwest’s argument that Contreras’ moving of 15-20 bags was *de minimus* in nature and argues that the Company is attempting to expand the language of [REDACTED]. The Union asserts there is a huge difference in tagging a few strollers as occurred in [REDACTED] versus using a piece of power equipment to complete “airline operations” in the instant grievance. The Union contends that specifications in Article Five that lists the operation of power equipment to complete airline operations (such as Contreras hooking up the cart to a tug) further demonstrates that moving the bags was an exclusive duty of a ramp agent.

The Union further asserts that pursuant to the [REDACTED] award, moving bags was not a shared activity—it is a duty historically performed by ramp agents; therefore, it is considered covered work.

Contrary to the Company’s position that no harm resulted from Contreras’ actions, the Union argues that Southwest’s non-compliance with the CBA erodes the contract and threatens job security. It also results in a loss of confidence in the Union’s ability to ensure a better quality of life for its members. This, according to the Union, is consistent with long-held arbitral precedent that the transfer of work customarily performed by employees in a bargaining unit to others outside the unit must be regarded as an attack on the job security of the employees.

As to Southwest’s statement that it would not have called out or held over an employee to move the cart of bags, the Union argues that arbitrators have held that covered work violations are treated as overtime bypasses, even if management determined that no overtime was needed to perform the covered work.

## Discussion

In a non-disciplinary arbitration, the burden of proving a contract violation by a preponderance of evidence lies on the party alleging the wrongdoing. A review of the evidence shows that the Union has met its burden.

Article Five sets forth some of the duties performed by ramp agents that includes, “transporting cargo to and from aircraft, including from the Company to other carries.” No evidence was provided that shows any other work group or classification has historically shared in the performance of this task. Therefore, based on the evidence presented, transporting baggage to and from aircraft can rightly be considered the exclusive work of a ramp agent. When Contreras moved the cart of bags, whether it was three to five bags or 15 to 20 bags, from Gate C-16 to D-7, he performed covered work. The question remains—was this permissible under the contract? The answer, consistent with Arbitrator Barnard, is no.

Once the language in Article Two was modified in 2008, supervisors were prohibited from performing covered work unless it was done with the “intent...to assist, direct, train, evaluate agent performance and support the operation by managing and directing the workforce.” Such was not the case here. Contreras attached the cart to his tug and moved the cart of bags by himself from start to finish. He was not assisting a ramp agent, or directing, training, evaluating performance or directing the workforce as he performed this task.

Consistent with the holdings in [REDACTED] and [REDACTED] Southwest contends there is no contract violation because Contreras lacked the key element of intent to undermine or supplant the work of an agent or to replace a covered employee. Southwest asserts that Contreras moved the bags, not because he intended to undermine or replace a ramp agent, but because he mistakenly read the tags and thought the bags were supposed to go on a Pittsburgh flight that was leaving soon. The Union presents a different story, casting doubt on Southwest’s version of events. According to the Grievant, when he radioed Contreras and asked what he was doing, Contreras said he was moving the bags to the Portland flight. [REDACTED] testimony was corroborated by Lav Truck Driver, [REDACTED]. The Union also points out that the Portland flight was not departing for one hour and 40 minutes and that the Pittsburgh flight had already departed. Flight records and OTIS Reports corroborate this information.

The only evidence presented by Southwest was a handwritten statement by Contreras over one month after the incident. The statement does not identify the flight to which he was bringing the bags—or to which he thought he was bringing the bags. In addition, Southwest has not denied that Contreras told [REDACTED] he was bringing the bags to the Portland flight which was departing

over an hour later. As Contreras was not called as a witness during the hearing, the written statement could not be validated and no credibility assessment could be made. Without Contreras' testimony, one is left with the assumption that while Contreras' intent to help may have been noble, he demonstrated, at the least, a casual indifference to the protections afforded to covered employees in the collective bargaining agreement.

Southwest's next argument that no contract violation occurred because moving a cart of bags dropped at the wrong gate was not a duty assigned to any agent is similarly unpersuasive. In [REDACTED] Arbitrator Neumeier found that in conjunction with other factors, the supervisor's moving of empty carts was not a contract violation because "the work performed by the supervisor was not subject to a specific assignment—it could have been left undone, or it could have been performed by any agent in the area." The instant grievance does not involve the movement of empty carts that were in the way of operations. It involves transporting baggage to an aircraft which, as discussed earlier, is a duty specifically delineated in Article Five and determined to be covered work exclusively performed by ramp agents. Therefore, in this instance—where time was not of essence and where there were a multitude of ramp agents available to perform the work—moving a cart of bags to another gate constitutes a violation of the CBA.

Southwest next argues that no ramp agent would have been required to work overtime to move the cart of bags to the correct gate and that pursuant to [REDACTED] the grievance should be denied. The Arbitrator disagrees. In [REDACTED], Arbitrator Neumeier denied a grievance not just because no employee would have been asked to work overtime to move empty carts, but also because it was found that moving empty carts was not a duty assigned to a specific individual or classification. Here, it has already been determined that moving baggage is the covered work of ramp agents. The fact that no employee would have been called for overtime to move a cart of bags left at the wrong gate does not warrant a finding of no contract violation.

Southwest contends that even if moving the cart of bags is considered covered work, then any violation of the CBA should be disregarded under the *de minimus* principle. Southwest contends that this is consistent with [REDACTED] because moving the bags took less than two minutes and resulted in no damage to any covered employee. In [REDACTED] Arbitrator Hill did not deny the grievance solely because it took under three minutes to tag strollers in a jetway. Rather, the grievance was denied based on additional factors, such as the fact that tagging strollers was found to be an activity shared by a number of different classifications.

Here, it has been determined that transporting baggage is not a shared responsibility, unless a supervisor has "intent...to assist, direct, train, evaluate agent performance and support the

operation by managing and directing the workforce.” As established, Contreras did not move the bags assist a ramp agent, or direct, train, evaluate agent performance and support the operation by managing and directing the workforce. Therefore, the lone argument that performance of covered work by a non-bargaining unit member was of short duration, does not save the Company from a finding of a contract violation. Such a defense would potentially allow the Company to perform repeated, short bursts of covered work that could result in loss of hours and/or jobs of bargaining unit members.

That said, it cannot be held that the Union and/or ramp agents suffered no measurable damages. Measurable damages are not confined to the immediate. In determining the damages of contract violations, one must not only consider short-term, immediate damages, such as loss of compensable work opportunities. One must also consider long-term damages caused by erroneous or willful misinterpretation, misapplication, or disregard of/for the terms and conditions of the contract.

Southwest agreed that Contreras could have found a ramp agent to move the cart, but asserted that it did not have to because it would have taken longer to find someone to do the work than it would have taken to do the work himself.<sup>3</sup> But for a true emergency, of which the Company has not shown this to be, the interest of expediency in performing a task does not absolve the Company from operating within the confines of the CBA. While the length of the challenged activity here was brief and immediate monetary damages slight, performance of covered work outside the confines of the CBA results in long-term measurable damages. When a supervisor has the time and ability to have covered employees perform covered work, but performs the work himself or directs a non-bargaining unit member to perform covered work, such damage takes the form of erosion of job security.

Casual indifference to the terms of a contract is nearly as objectionable as an intentional breach, and quite often has the same effect. Such behavior by either party fails to show respect for the benefit of the bargain achieved in negotiations, which is the cornerstone of labor-management relations.

For the reasons set forth above, the grievance is sustained.

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<sup>3</sup> (Tr. 68:21-69:1.)

### **Award**

The grievance is sustained. The Union has proven by a preponderance of evidence that moving a cart of misplaced baggage is considered covered work, and that the contract was violated when a ramp supervisor moved the cart of misplaced baggage to another gate instead of a ramp agent. The parties have agreed to craft a remedy in this case, should the grievance be sustained.