

afforded the opportunity to present evidence through the testimony of witnesses and the introduction of exhibits.

ISSUES

Did the Employer have just cause to terminate the grievant? If not, what is the appropriate remedy?

RELEVANT CONTRACT PROVISIONS

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 FIVE CLASSIFICATIONS

SECTION TWO OPERATIONS AGENT/FREIGHT AGENT

The work of an Operations Agent includes the functions which have been historically performed by Operations 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

- L. Writes and submits irregularity reports as required.

ARTICLE TWENTY GRIEVANCE / SYSTEM BOARD / ARBITRATION DISCHARGE and DISCIPLINE

**SECTION ONE
PROCEDURES**

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.

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.

**RELEVANT WORK RULES
BASIC PRINCIPLES OF CONDUCT**

Each employee is expected to be familiar with and adhere to all Company policies and procedures. Any violation of each of the following will be grounds for disciplinary action. Discipline may range from a reprimand to discharge, depending on the particular violation and the circumstances.

4. Complete coordination with Coworkers and Supervisors is required in order to provide harmonious working conditions.

15. Insubordinate conduct or refusing to follow a work order or any act of insubordination.

UNIFORM APPEARANCE STANDARDS

The following guidelines apply to all uniform positions unless specified otherwise:

Headwear

Hats – Below the Wing Only

FACTUAL BACKGROUND

The Employer initially hired [REDACTED] in 2014. Since then he has worked as an Operations Agent at the St. Louis Lambert Field airport. Operations Agents are responsible for staffing airport gates, coordinating ramp and provisioning operations at the gate, and facilitating the efficient boarding and departure of passengers.

On June 10, 2019, Above the Wing Supervisor Lakesha Liner observed [REDACTED] wearing a beanie or stocking cap that was not approved for Operations Agents. Liner informed [REDACTED] that his beanie was not an approved article of clothing and instructed him to remove the beanie. [REDACTED] refused. [REDACTED] stated that he was wearing the beanie because he was cold but did not explain that he had a medical condition that caused him to be cold. Liner subsequently returned with Above the Wing Supervisor Rhonda Jones, and they observed [REDACTED] still wearing the beanie. Liner directed [REDACTED] to remove the head covering and warned him that a refusal to do so would be considered insubordination and result in termination. [REDACTED] again declined to remove the beanie.

At the arbitration hearing, the Employer introduced Southwest Airlines Uniform Appearance Standards which provide that hats may be worn only by Below the Wing employees who have no contact with customers. Operation Agents are Above the Wing employees.

The Employer held a Fact-Finding meeting with [REDACTED] on June 11, 2019. During that meeting, [REDACTED] admitted that he had refused to follow the directive given by Liner. [REDACTED] also stated that he suffered from hyperthyroidism and hypoglycemia that caused him to be cold, and he produced a June 10 note from an urgent care physician's assistant that supported the grievant's contention without describing the underlying medical condition. The

Employer conducted a further investigation and decided to terminate [REDACTED] for insubordination on June 15, 2019.

At the arbitration hearing, the Union elicited testimony to the effect that the Employer has never provided notice to Operations Agents informing them that the wearing of hats and other head coverings is not permitted. In this regard, the grievant testified that he has worn beanies off and on for the past two years without ever being told that this was inappropriate. [REDACTED] also testified that Supervisor Liner never made any attempt during the incident in question to ascertain why the grievant was declining to remove the beanie.

During cross-examination, [REDACTED] acknowledged that he had never requested permission to wear a beanie at work as an accommodation for his medical condition. The grievant also testified that he has not been treated by his primary care physician for his claimed medical condition. Instead, the document produced at the Fact-Finding meeting was obtained after the fact from an urgent care physician's assistant who provided a note on work limitations based upon information provided by the grievant. In this regard, [REDACTED] testified that "I just asked that . . . they put in something where I can wear or request that I be able to wear articles of clothing to keep me warm"

POSITIONS OF THE PARTIES

Employer

The Employer contends that it had just cause to discharge [REDACTED] because he engaged in insubordination by refusing a supervisor's directive to remove his inappropriate beanie. The Employer maintains that it has established each of the essential elements for a finding of insubordination: a clear order, an explanation of the consequences of noncompliance, and the grievant's explicit refusal to comply with the order. With respect to the issue of remedy, the

Employer claims that discharge is an appropriate sanction given the unequivocal and intentional nature of the grievant's insubordination. The Employer also argues that the grievant's purported medical condition should not be a basis for leniency since the grievant never mentioned that condition at the time of his refusal and his after-the-fact attempt to prove the existence of the condition lacks credibility.

Union

The Union claims that the Employer's discharge of the grievant is not supported by just cause for several reasons. First, the Union contends that the Employer never provided Operations Agents with notice that the wearing of hats was forbidden and that the Employer condoned the grievant's practice of wearing a beanie for two years. The Union maintains that supervisor Liner never gave [REDACTED] a clear and direct order but instead merely recited her understanding of company policy. In addition, Liner never questioned [REDACTED] as to why he was wearing a beanie. If she had, she would have learned that the grievant has a medical condition that necessitated the wearing of a head covering. Finally, the Union argues that discharge is too severe of a remedy in any event.

DISCUSSION AND OPINION

In accordance with the terms of the parties' collective bargaining agreement, the Employer bears the burden of establishing that it had just cause to support its disciplinary decision. This inquiry typically involves two distinct steps. The first step concerns whether the Employer has submitted sufficient proof that the employee actually engaged in the alleged misconduct or other behavior warranting discipline. If that proof is established, the remaining question is whether the level of discipline imposed is appropriate in light of all of the relevant

circumstances. *See* ELKOURI & ELKOURI, HOW ARBITRATION WORKS 15-25 (8th ed. 2016).

Each of these steps is discussed below.

The Alleged Misconduct

The Employer alleges that the grievant engaged in misconduct by refusing to comply with a directive given by a supervisor. The Union counters that supervisor Liner merely recited her understanding of the Employer's policy, but never gave ██████████ a clear and direct order.

I think that the Employer has the better of this argument. First of all, the Union's defense is only partially correct. While Liner referenced the policy in her first encounter with the grievant, she clearly directed ██████████ to remove the beanie during a second encounter and she informed him that a failure to comply would result in termination. In response, the grievant explicitly refused to comply. Based on this testimony, the Employer has carried its burden to establish the basic elements of insubordination: a clear order, an explanation of the consequences of noncompliance, and the grievant's explicit refusal to comply with the order. DISCIPLINE AND DISCHARGE IN ARBITRATION CH. 5 II.A. (Brand & Biren, 2d ed. 2008). The Employer clearly has established that the grievant engaged in the misconduct as alleged.

The Appropriate Remedy

The Employer maintains that discharge is an appropriate sanction given the unequivocal and intentional nature of the grievant's insubordination. "Obey now, grieve later" is one of the hallmark rules of labor law.

The Union argues that discharge is too severe of a penalty in light of the grievant's medical condition. The Union contends that ██████████ suffers from hyperthyroidism and hypoglycemia. This condition causes him to be cold such that the wearing of a head covering is

a practical necessity. In support of this contention, [REDACTED] produced a June 10, 2019 note from an Urgent Care PA stating that he should be allowed to wear warm clothing.

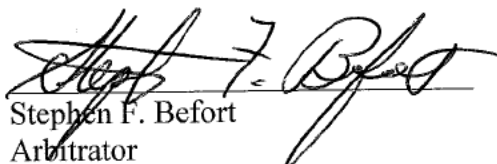
The Employer maintains that the Union's claim that [REDACTED] needed to wear a head covering due to a significant medical condition lacks credibility. The grievant has never sought permission to deviate from the no-hat policy as an accommodation to his medical condition. During the June 10, 2019 confrontation with supervisor Liner, [REDACTED] never claimed that he was wearing the beanie due to a medical condition. Most telling, the Union produced no evidence that [REDACTED] has ever been diagnosed or treated for hyperthyroidism or hypoglycemia by his primary care physician. Finally, even the note that the grievant produced at the Fact-Finding meeting does not state that [REDACTED] suffers from any underlying medical condition. That note, instead, was obtained after the fact from an Urgent Care Physicians Assistant who provided a note on work limitations apparently solely based upon information provided by the grievant.

I find the Employer's arguments on this issue to be persuasive. Accordingly, I conclude that the Union has failed to show that the grievant's insubordinate behavior should be excused due to ameliorating circumstances.

AWARD

The grievance is denied.

Dated: November 20, 2019


Stephen F. Befort
Arbitrator