


American Arbitration Association

VOLUNTARY LABOR ARBITRATION TRIBUNAL

In the Matter of the Arbitration between


-and-
Southwest Airlines Company
Grievance: Termination
Dallas, Texas

CASE NUMBER: 71E 300 00464 89

AWARD OF ARBITRATOR

THE UNDERSIGNED ARBITRATOR(S), having been designated in accordance with the arbitration agreement entered into by the above-named Parties, and dated and having been duly sworn and having duly heard the proofs and allegations of the Parties, AWARDS as follows:

The Grievance is denied.

Charles R. Meier 1-30-1990

Arbitrator's signature (dated)

STATE OF Texas } ss.: 515-46-1891
COUNTY OF Tarrant

On this *30th* day of *January*, 19 *90*, before me personally came and appeared *Charles R. Meier*

to me known and known to me to be the individual(s) described in and who executed the foregoing instrument and he acknowledged to me that he executed the same.

Barbara J. Snell
Notary Public

Commission Expires:
5/26/90

AWARD

In the matter of arbitration

between

Southwest Airlines Company

and

Ramp Operations Provisioning
Association

before

Charles R. Greer
Arbitrator

on

January 24, 1990

at

Dallas, Texas

AAA 71E 300 00464 89

Grievance:

Termination-- [REDACTED]

Dated: October 5, 1989

Appearances for the Company:

Jim Chancellor, Regional
Director, Ground Operations

Bob Sigsbee, Station Manager

Davie Martin, Ramp Supervisor

Roosevelt Roston, Ramp
Supervisor

Appearances for the Association:

Marvin Connor, ROPA District 1
Representative

[REDACTED], Ramp Agent

[REDACTED], Grievant

BACKGROUND FACTS

The Grievant seeks reinstatement to his former position as a ramp agent. The parties are the Ramp Operations Provisioning Association and Southwest Airlines.

The Grievant was hired April 1, 1981 and had worked for the Company for over eight years at the time of his discharge. On October 5, 1989 he was discharged, according to the Company, for repeated violations of the "no-show" policy. The prohibition against "no-shows" is specified in Section Three, Part 3.40.15 of the Ground Operations Manual which specifies the following disciplinary actions for accumulation of "no-shows" in a calendar year: first offense--letter of warning, second offense--letter of warning and one day off without pay, third offense--final letter of warning and one day off without pay, fourth offense--termination of employment.

"No-shows" are defined by the Company as an employee's failure to notify the Company of his or her inability to report for a scheduled shift assignment when (1) their scheduled shift has been covered with an overtime assignment or (2) more than fifty percent of their scheduled shift has elapsed.

The relevant language of the Agreement follows:

Agreement, Article Two, Scope of Agreement, Paragraph C.: Employees covered by this Agreement shall be governed by all Company rules, regulations and orders 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 the affected employees prior to becoming effective.

Agreement, Article five, Classifications, Ramp Agent/Provisioning Agent, Paragraph O.: Works according to Company regulations and procedures and instructions from supervisor.

Agreement, Article Six, Hours of Service, Paragraph L.: The trading of a workshift or day off between employees within the same classification will be permitted if a request in writing, signed by all of the trading employees, is submitted to the appropriate station manager at least 24 hours in advance of the starting time of the first intended trade, provided the employees involved

are capable of performing the job function traded. Requests submitted less than 24 hours prior to the first intended trade are subject to management approval. Employees who trade become responsible to work the shift agreed to as if it were part of their regular shift assignment. Employees who have agreed to work for other employees under this provision must work the day or shift as agreed and may not trade or exchange this obligation with any other person. No trade can involve more than four persons. Trades involving probationary employees are subject to Company approval.

Agreement, Article Eighteen, General and Miscellaneous, Paragraph K.: When employees are unable to report to work at their regular shift starting time, they shall inform their supervisor at least one (1) hour prior to scheduled work time unless they are unable to do so because of a reason beyond their control. After an unsuccessful attempt to notify the supervisor, a call to whoever is on duty at the location office phone notifying that person of the inability to report will satisfy this paragraph. The responsibility for making certain that the Company is promptly notified is the responsibility of the employee.

Agreement, Article Twenty-Five, Discharge and Discipline, Paragraph A.: No employee who has passed his probationary period will be disciplined to the extent of loss of pay or discharge without just cause.

Agreement, Article Twenty-Five, Discharge and Discipline, Paragraph B.: No employee who has passed his probationary period will be disciplined to the extent of loss of pay or discharge without being advised in writing within 24 hours following such discipline of the reason or reasons for such disciplinary action.

POSITION OF THE COMPANY

The following are the main points on which the Company presented evidence and argument:

1. The Grievant was terminated for repeated failure to report for work, specifically for violations of the "no-show" policy as outlined in Section Three, Part 3.40.15 of the Ground Operations Manual.
2. The Grievant's "no-shows" occurred in the early morning when there are originating flights. The preparation of originating aircraft must be done on a timely basis so that these flights can depart on schedule. When originating flights are late there may be delays throughout the rest of the day and air mail may be late. Because of the importance of timely departure of originating flights, there is a hectic preparation period in which it is

important to have a sufficient number of ramp agents at work. When a ramp agent is late for work, and the activity level requires timely replacement of the missing agent, a supervisor or manager will call in another agent on an overtime assignment.

3. There is no 30 minute grace period between the time that the agent is scheduled to report and the time at which another agent will be called in on overtime. Both Supervisors Davie Martin and Roosevelt Roston testified that they were unaware of any 30 minute grace period. The waiting period before an overtime call-in depends on the activity level of the day.

4. A progressive disciplinary procedure was used and was in accordance with the procedure indicated in Section Three, Part 3.40.15 of the Ground operations manual. The first violation of the "no-show" policy occurred on May 29, 1989 when the Grievant did not report to work. For this violation the Grievant received a warning letter. For the second violation, on June 19, 1989, an overtime replacement was called after the Grievant was 75 minutes late for work. The Grievant was issued a warning letter and was assessed one day off without pay. At the fact-finding hearing on this incident the Grievant had no questions about "no-shows" and Station Manager Sigsbee talked to him when he gave him the letter. On the third violation, August 26, 1989, the Grievant was 15 minutes late for work when an overtime replacement was called. On this date there were two agents late for work which made it necessary to wait no more than 15 minutes before calling in an overtime replacement. For this violation Grievant received a final warning letter, was assessed a day off without pay, and was warned that he would be terminated if another "no-show" occurred during the year. On the fourth violation on October 5, 1989 the Grievant was 35 minutes late when an overtime replacement

was called.

5. Station Manager Sigsbee encouraged the Grievant to call other supervisors or himself at home whenever the Grievant would be unable to report on time, supplied him with the telephone numbers of managerial personnel, and counseled him to seek help through the Company's employee assistance program if personal problems were causing him to be late.

6. On the Grievant's performance evaluation form (signed by the Grievant on July 12, 1989), Station Manager Sigsbee specifically noted that his attendance record was poor, rated attendance unsatisfactory, and stated that he must improve. Station Manager Sigsbee also noted on the evaluation form that the Grievant had two "no-shows." At this point the Grievant's 11 tardies were specifically noted. Termination occurs with 15 tardies.

7. A memo from the Association's Tulsa representative on August 30, 1989 acknowledged the importance of notifying the Company when agents are unable to report on time for their shifts.

8. The Agreement specifies in Article 18, Paragraph K, that employees must inform their supervisor one hour before their scheduled work time that they are going to be late, unless they are unable to do so because of reasons beyond their control.

9 Both Supervisors Martin and Roston testified that employees regularly call them at home. Supervisor Roston has asked that they not call him at night when they know that they are going to be sick the next day, instead he instructs them to call the supervisor on duty who has the overtime book.

POSITION OF THE ASSOCIATION

1. "No-show" guidelines from the ground operations manual were not distributed to employees, instead they were kept in the station

administrator's manual which is kept in the manager's office. Company supervisors do not encourage their subordinates to study the ground operations manual and subordinates would be unlikely to see it. "No-shows" are not provided for in the contract. The contract provides only for tardiness.

2. The "no-show" rule is ambiguous, leaves room for multiple interpretations, and is not applied consistently throughout the operations of the Company. There is no policy which specifies when a "no-show" begins in terms of minutes, whereas a tardy begins two minutes after the start of a shift. The tardiness provisions in the Agreement are being circumvented by the "no-show" policy.

3. Ramp agents have difficulty notifying supervisory or managerial employees that they are going to be late because some supervisors must be called long distance while others have unlisted telephone numbers. Supervisor Roston testified that his telephone number is unlisted. At other times, supervisors are tied up with other activities and cannot be contacted at work in the morning. Telephone answering machines also contribute to delays in notifying supervisory personnel. The cumulative delays from these factors add up to difficulties in notifying supervisors that an agent will be late.

4. The Grievant is a long time employee (over eight years) who has had commendations in the past for his performance. It is unusual that an employee with such an employment history would have such a negative performance evaluation.

5. Ramp agents were under the impression that a 30 minute grace period would be allowed before a "no-show" would be invoked by a call-in for overtime assignment. Ramp Agent [REDACTED] testified that he had heard about a 30 minute grace period several times during the summer of 1989.

6. When the Company calls a replacement, the replacement does not have time to get to work quickly enough to remedy any problems that are created by the "no-show". Thus the benefits of the rule are questionable.

7. Extenuating circumstances accounted for the first "no-show" violation. The Grievant signed a shift trade agreement and left it for the signature of another employee who agreed to trade. Although not in accordance with the procedure specified in the Agreement, it is not unusual for someone to give their word that they will take a shift trade. Unfortunately, the employee who agreed to the trade did not sign the agreement and failed to report for the Grievant's shift. It was only after the first "no-show" that the Grievant understood the "no-show" policy.

8. For the second "no-show," there were extenuating circumstances. The Grievant, who is a single parent, had taken his son to the emergency room during the night. He was up late and overslept.

9. The third "no-show" violation was triggered by a double "no-show" when the Grievant was only 15 minutes late for work. The Grievant's tardiness by itself would not have resulted in a "no-show." The fact that another employee was also late was beyond his control. Because of the Association's recent replacement of the previous bargaining agent, the Association was not able to take this violation to arbitration. Furthermore, the Grievant thought that there was a 30 minute grace period.

10. For the fourth "no-show" the Grievant had difficulty getting his car started after someone had damaged its theft protection device. He also had trouble getting through to a supervisor on the telephone.

11. A listing of 45 dates when ramp agents were late in reporting to work in 1989 indicates that, except for one marked "no-show" and three marked "no

punch," all were classified as tardies. For the 41 tardies where punch-in times were listed, periods of tardiness ranged from three minutes to six that were over one hour. One tardy was even three hours in length. Of those greater than an hour, three had scheduled start times from 5:00 to 6:00 a.m., the period at which staffing is critical for originating flights.

DISCUSSION

The Company followed a progressive procedure in dealing with the Grievant's "no-shows" and its actions conform to the steps called for in the Ground Operations Manual. Contrary to the Association's assertion, there is no requirement that a rule must be listed in the Agreement before it can be enforced. However, it is not clear that the Grievant knew that a "no-show" could result from an overtime call-out until after he was charged with his first "no-show." Nonetheless, his first "no-show" did not result from an overtime call-out, but instead resulted from a shift trade request in which his departure from procedure left him no recourse for complaint. The Grievant testified that he understood the "no-show" rule after his first violation and warning letter. Thus, none of the four violations can be excused on the basis of ignorance of the "no-show" rule.

The Association argues that the "no-shows" resulting from overtime call-outs should not constitute rule violations because their determination is arbitrary. It maintains that since there is no set definition of a "no-show," in terms of minutes, the call-out of an overtime replacement for a tardy agent is an inherently inconsistent method of determining a violation. The Association points out this inconsistency by noting that the Grievant was only 15 minutes late for his third "no-show" while other employees have been assessed tardies for being much later. Nonetheless, the Company has a

rational explanation for the rule when it points out that it is the activity level that forces a supervisor to call in overtime replacements, not the amount of time that the ramp agent is late.

Individually, the Grievant's explanations for of each of the "no-shows" warrant some sympathy. Clearly, one can understand the disruption in sleeping habits resulting from taking a child to an emergency room, difficulties in calling-in, car difficulties, and a breakdown in a shift trade arrangement. However, the combined accumulation of four such violations between May and October and 11 tardies during the first seven months of 1989 preclude a view toward extenuating circumstances.

The Grievant's tardiness record also weakens the Association's ability to argue that the "no-show" rule was applied inconsistently in the Grievant's case. It is true that the Association's data list lengthy time periods for which tardies were not converted to "no-shows" by overtime call-outs. By themselves, variability in these times does not indicate inconsistent application of the rule if one accepts that overtime call-outs are determined by the demands of activity levels. If one were to deny the importance of activity levels as the basis for overtime call-outs, one might question whether the Grievant may have been treated unfairly. Two of his "no-shows" resulted from being 15 and 35 minutes late while some tardies reported by the Association were for much longer periods. Further, the Association's data indicate an average tardy length of 31.2 minutes for the 41 tardies for which punch-in times were noted. However, the Grievant's performance evaluation, in which his 11 tardies were noted, reports the total duration of his tardies to be 9.5 hours. Based on these data, the average length of the Grievant's tardies comes out to 51.8 minutes. Thus, the Grievant's tardies were longer,

on the average, than those listed in the Association's data. As a result, even if one were to deny the importance of activity levels in explaining variation in times at which overtime replacements are called out, it cannot be concluded that the Grievant was treated less favorably than other employees.

It is unfortunate when a long time employee finds himself in a situation such as the Grievant has. Nonetheless, he put himself in jeopardy of termination by his repeated failure to report for work on time and did not take appropriate action to correct his behavior in spite of warnings of the consequences. I must conclude that the Company terminated him for just cause.

AWARD

The grievance is denied.



Charles R. Greer
Charles R. Greer
Arbitrator

4265 Cadiz
Fort Worth, TX 76133

January 30, 1990