
IN THE MATTER OF ARBITRATION

OPINION AND AWARD

between

SOUTHWEST AIRLINES

**Case No. ATL-P-0768/15
(Attendance Point –**

and

[REDACTED]

TWU LOCAL 555

Gil Vernon, Arbitrator

APPEARANCES:

On Behalf of the Company: Dan Kusek, Senior Manager Labor Relations – Southwest Airlines

On Behalf of the Union: Mark Waters, District 4 Representative – Local 555

I. ISSUE

The grievance before the Arbitrator protests the Company’s assessment and subsequent failure to waive one-half of an attendance point for a “reported” instance of tardiness on March 10, 2015. Grievant was scheduled to start work at 12:30 p.m. He did not punch in until 12:43 p.m.

The grievance read in pertinent part as follows:

“Employee Statement of Grievance: Agent receive (sic) ½ point for being late do (sic) to the president had just landed and the police had shut own road around the provo building. Agent call assist provo manager to let him know he was around the corner. Couldn’t move because of the president.

“Remedy or settlement Sought: To remove ½ point from attendance records.”

The grievance was denied noting that no one else was tardy that day.

Ultimately, the grievance was appealed to arbitration. A hearing occurred July 22, 2015. Subsequently, post-hearing briefs were filed and a transcript was received.

At the hearing the Union framed the issue as follows:

“Was the Company’s decision not to waive the grievant’s point, due to compliance with federal, state and municipal regulation, arbitrary or unreasonable and, if so, what shall be the remedy?”

The Company framed the issue as follows:

“Was the contract properly applied when the Company assessed half a point to the grievant on March 10, 2015 when he reported tardy? If not what shall be the remedy?”

II. RELEVANT CONTRACT LANGUAGE

ARTICLE TWENTY-THREE ATTENDANCE

- A. Purpose. The Company and the Union recognize that habitual absenteeism and tardiness adversely affect operations and morale. The purpose of this program is to control the attendance of employees in a constructive manner and within the framework of progressive disciplinary procedures. In order to avoid the accumulation of occurrences, it is recommended that, in the event Employees require time off, they should, to the degree possible, secure trades with other Employees, request vacation time, or, where appropriate, request a leave of absence. Using sick leave or sick pay for a purpose other than that intended constitutes abuse. Abuse of sick leave or sick pay shall warrant immediate termination.
1. Reporting Procedure. In all cases of absence or tardiness, the Employee shall call his supervisor. If the Employee is unable to call, he shall cause someone to call in his stead. Answering machines at the stations can also be utilized.

2. Requirements of Reporting. Call-ins must be made at least one-half (1/2) hour before the start of the Employee's shift on every day that the Employee shall be absent. Failure to report an absence at least one-half (1/2) hour prior to the start of the Employee's shift shall be treated as unreported. Failure to report a tardy before the beginning of a shift shall be treated as an Unreported Tardy. No tardiness shall be charged until two (2) minutes have passed from the Employee's scheduled starting time. If an unusual condition exists that would make it impossible for the Employee to report an absence or tardy within the required time frames before his shift, a valid reason must be furnished. If no valid reason is furnished, the penalty for an unreported occurrence shall be assigned. If an Employee can provide doctor's verification in advance of a specific duration of absence, the requirement to call in each day shall be waived by the appropriate manager.

**SECTION 1
ATTENDANCE PROGRAM**

DEFINITIONS

- E. Unreported Tardy. Any Employee who reports to work within one-half (1/2) hour after the start of his shift and did not notify local management that he was going to be late prior to his shift beginning shall be charged with an Unreported Tardy.
 1. Within ½ Hour Window. If the Employee did not notify the local management that he was going to be late prior to his shift beginning, but notifies the local management within one-half (1/2) hour after the beginning of his shift, the Employee shall be allowed to report to work, provided he reports to work within one hour and thirty minutes (1:30) past the beginning of his shift. Otherwise he shall be sent home without pay and charged with a No Show (Unreported Absence).
 2. Outside ½ Hour Window. If the Employee is more than one-half (1/2) hour late and has given no notice to the local management that he shall report late, the Employee shall be sent home without pay and shall be charged with a No-Show (Unreported Absence).
- F. Reported Tardy. Any Employee who calls prior to the start of his shift and reports that he shall be late or any Employee who calls within one-half (1/2) hour after the start of his shift because of an extreme or unusual circumstance shall be considered tardy. In this instance, the Employee should estimate the time he shall arrive at work. However, in no event shall the Employee be permitted to report more than two (2) hours after the start of his shift.

1. Two (2) Hour Period/Fails to Report. If an Employee calls reporting that he shall be late and fails to report to work within two (2) hours from the start of his shift without further notification to the local management of his intended absence, he shall be charged with a No-Show (Unreported Absence).
2. Two (2) Hour Period/Reports. If however, the Employee provides notification to local management within this two (2) hour period, he shall be charged with a Reported Personal Absence.

**SECTION II
CONTROL PROCEDURES**

- A. Recorded Occurrences. Absences and tardiness on scheduled workdays, overtime, training, trades or holidays shall be recorded in the following manner:

No-Show (Unreported Absence)	2	
Reported Personal Absence (Personal Business)	1	
Reported Illness (Non-Chargeable)	0	
Four (4) doctor's statements for Calendar year, but no more than One (1) November 1 – January 3		
Reported Illness (Chargeable) (No doctor's statement or after utilizing allowable number of doctor's statements for Non-Chargeable Reported Illness	1	on the first day and ½ for the third consecutive day, to a maximum of 1-1/2 per single continuous illness
Unreported Tardy	1	
Reported Tardy	½	

B. Point Accumulation. The Company shall be responsible for notifying an Employee receiving a chargeable occurrence for absenteeism/tardiness of the following disciplinary action as the occurrences accumulate:

Less than 1 point	No action taken
1 – 2-1/2	Letter of Instruction
3 – 4-1/2	Warning letter
5 – 6-1/2	Final warning
7 or more	Termination

III. OPINION AND DISCUSSION

The Parties have bargained, and made part of their contract, detailed attendance procedures that also address matters of tardiness. Generally speaking, the language is what is commonly referred to in industrial relations parlance as a “no-fault” program. Notably, it also treats “reported” tardiness separately from “unreported” tardiness. For example, an unreported tardiness is assessed 1 point and a reported instance is assessed less than that (1/2 point).

In this case, the contractual provisions related provisions to “reported tardiness” apply because Grievant contacted his supervisor at 12:09 p.m. to say he was having difficulty getting to or near the work site.

The Union’s position is that the Company arbitrarily and unreasonably assessed the one-half point as it failed to give due consideration to the mitigating circumstances. These circumstances related primarily to the fact the street in front of the facility was blocked off by federal and local authorizes for security purposes. Air Force One was parked near the rear dock and warehouse having

transported the President there for an event. The Union notes too the Company has waived points in the past where unusual conditions impeded employees' inability to report to work.

The Company's position is the assessment was consistent with the contract. They also note that the assessment had no direct impact on the Grievant because it did not cause the implementation of any disciplinary step or loss of pay. Nor did he lose "SWAG" benefits as a result of this rather it was due to his calling in sick when scheduled for mandatory overtime. They argue that the issue or question of when to waive an occurrence is entirely within Southwest's discretion. Moreover, they assert it was not a secret the President was coming and would affect the operation in this area. Therefore, there was plenty of notice to the employees that there would be traffic closures around the area so employees could adjust accordingly. Indeed, across all Atlanta departments only one other employee was late and that employee's tardiness for a later shift was unrelated to the Presidential visit.

In the opinion of the Arbitrator the Employer was not arbitrary in its assessment of the one-half point to the Grievant. First, the contract clearly provides for an assessment of when an employee reports late. The Employer indeed had the contractual right to enforce the contract so long as it did not do so for improper reasons. While the circumstances were unusual one of the purposes

of this kind of attendance system is to avoid the Parties from having to wade through difficult issues of fault. For instance, the Company has no way of telling if it is true, as Grievant said, he left home in plenty of time. Indeed, the notion advanced at the hearing by Grievant that if he had parked on a side street that he would have been prevented from crossing the street by authorities didn't ring true as the evidence shows employees were allowed to cross the street to observe the President's motorcade from both sides of the street.


The contract also has a built-in degree of mitigation because reported tardiness is treated with more leniency than unreported tardiness.

The Grievant might prevail if he were to show that he was treated differently than other ATL employees impacted by the President's visit. He got the same advanced information as everyone else yet he was the only one (of four) with a similar start time that was tardy. This all militates against the notion that these circumstances were so unusual or extreme that any assessment was arbitrary. Cases where assessments were waived involved either verified individual explanations or broad circumstances affecting a wide range of employees.

In view of the foregoing, the grievance is denied.

AWARD

The grievance is denied.



Gil Vernon
Arbitrator

Dated this 19th day of October 2015.