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**IN THE MATTER OF ARBITRATION**

**OPINION AND AWARD**

**between**

**SOUTHWEST AIRLINES COMPANY**

**Case No. ATL-R-2729/14**

**(J. P. Loregnard)**

**and**

**Christmas 2014 Overtime**

**TWU LOCAL 555**

**Gil Vernon, Arbitrator**

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**APPEARANCES:**

**On Behalf of the Union:** Mark Waters – District IV Representative

**On Behalf of the Company:** Erick C. Burroughs, Attorney - SWA

**I. ISSUE**

The issue presented by the Grievance before the Arbitrator can be framed as follows:

“Did the Company violate applicable agreements in the manner in which it assigned known voluntary and mandatory overtime at the Atlanta Station for the Christmas holiday 2014, and, if so, what is the remedy?”

**II. BACKGROUND AND FACTS**

Over time the Parties, as a result of agreements and an arbitration issued by Arbitrator Barnett Goodstein, developed an enlightened approach and sophisticated procedures for assigning overtime on the Thanksgiving and Christmas holidays.

Naturally, this process is related to the general matter of the assignment of overtime on other days of the year. In general, when the Company's staffing needs are to be filled on an overtime basis, there are two basic methods to do so: (1) to request volunteers and/or (2) to make mandatory overtime assignments.

One of the bedrock principles concerning overtime is expressed in Article Seven (overtime) Section I.6. that reads as follows:

**Mandatory Assignments.** The Company and the Union agree that mandatory overtime assignments are not in the best interests of either party. To maximize voluntary overtime utilization, the Company must make overtime known to the Employees, and Employees must utilize the overtime call book to the fullest. If a sufficient amount of overtime is not voluntarily obtained or if no one signed the overtime call book, the Company shall require Employees to work the overtime. It shall only be assigned as outlined in Article 7.1.2.a., b., and c. in reverse order of seniority.

As the language suggests voluntary overtime employs a "call book" which is simply a list which sets forth the Company's overtime needs and allows people to sign up as volunteers.

The other bedrock principle was established in the Goodstein Award. All employees are considered 'off' or unassigned on the Thanksgiving and Christmas holidays even if her or his normal schedule would have them work the day on which the holiday fell.

Another concept that must be grasped (and wasn't by some of the participants in the hearing) is there is a difference 'known' overtime and 'unknown' overtime. At least in the context of this case known overtime is that which the Company anticipated needing to be filled at the time the call book

closes. Of course, even after the call book closes overtime vacancies may manifest themselves through on-the-job injuries or other unanticipated absences of people who volunteered or were assigned on a mandatory basis.

A couple other lesser principles are helpful in understanding this dispute. First, the Parties explicitly agreed in its 'Work Rule Interpretations' that for an overtime assignment to be valid it must be made on a personal basis (face to face or voice to voice). Messages are not sufficient. 'Question and Answer 35' states it thusly:

**35. Must an Employee be verbally advised of an overtime assignment or is a message left on a phone recorder acceptable? (Par.E)**

You must personally have the overtime assignment acknowledged via phone or in person. Messages cannot be given to another individual or left on a phone recorder.

Second, employees can volunteer for overtime even after the call book is "closed".

A line is drawn at the closing time and employees can sign "below the line".

Generally, they will be used prior to a mandatory assignment and a slightly different set of rules apply.

The above is not intended to be a complete and comprehensive description of all the overtime rules and procedures. It merely describes what the Arbitrator believes is particularly helpful in understanding this dispute.

Critical, however, in resolving this dispute is a Letter of Agreement signed October 8, 1991 which set forth a mutual understanding on how to implement the Goodstein Award which addressed Thanksgiving and Christmas overtime

assignments. Particularly relevant are the following four sections (with Sections 5 and 6 critically relevant):

4. The overtime call book may be signed by all those willing to work overtime, despite their regularly-assigned shift. (pg. 8) All will be considered on first day off status, and assignments from the overtime call book will be awarded by seniority.
5. The call book for Thanksgiving Day and Christmas Day will be closed out two weeks prior to the holiday. Assignments will begin immediately and will be completed within 72 hours of close out.
6. Mandatory assignments will begin immediately following completion of voluntary assignments.
7. Employees may continue to sign up for voluntary overtime for these two days after the call book is closed by signing "below the line". Assignments may continue to be made to those volunteering, even though mandatory assignments have begun; however, those who sign under the line have no grievance rights in accordance with Article 1 7, paragraph K.
8. Once assignments are completed, employees may trade shifts in accordance with Article 6. Shift trades will be paid at the straight time rate. (pg. 16)

It was against this contractual background that the current dispute arose concerning how the Company handled the assignment of known voluntary and mandatory Christmas overtime at its relatively large Atlanta operation (ATL). This grievance addresses just one aspect of several that arose in connection with the assignments. For example, evidently several people were listed on the Company's overtime assignment posting as mandatorily assigned without having been contacted. It was discovered later some of them were considered no shows and given attendance points. Overall, according to the testimony of one of the Union's System Board members all four members (two Union and two Company)

decided after hearing the Parties' respective presentations that the entire situation "was a total cluster mess". The instant case was deadlocked and advanced to arbitration. A hearing was held May 29, 2015. Post hearing briefs were filed on July 13, 2015.

The grievance before the Arbitrator as written and filed on December 19, 2014 read as follows:

Employee Statement of Grievance: Members were not notified within the 72 hours after the overtime book was closed for known overtime shifts involving mandatory overtime for Christmas Day.

Remedy or settlement Sought: Any members that were manditoried after 12:00 noon on 12-14-14 to work known overtime shifts on Christmas Day and worked them be given a day off of there (sic) choice with pay within the next thirty days.

At the arbitration hearing a few key undisputed facts emerged:

- (1) The call book was closed December 11, 2014 at noon and 72 hours thereafter would have been noon on December 14.
- (2) The Administrative Supervisor completed the voluntary assignments of known overtime on December 13 and started the mandatory overtime assignments on December 14.
- (3) Neither Company records nor the employee attestations submitted by the Union conclusively indicate when individual mandatory assignments were made.

### **III. OPINION AND AWARD**

This case is made difficult by an imperfectly written grievance and an imperfect Company defense. Indeed, the Company at the hearing was simply

wrong in several aspects of its interpretation of the October 8, 1991 LOA and related contractual provisions.

First, regarding the grievance it impliedly contends that mandatory assignments for known Christmas overtime must be made within 72 hours of the closing of the call book. This contention is not supported by the plain language of the LOA. It is Section 5 that says “assignments will begin immediately and will be completed within 72 hours of closeout”. However, when read in full context the “assignments” to which this sentence is referring are voluntary assignments from the call book. Thus, the 72-hour deadline applies only to the completion of the voluntary assignments from the “call book”. This is true because mandatory assignments are treated in the next and separate paragraph (number 6) and because paragraph number 5 clearly addresses the use or working of the call book. Had the Parties intended the 72 hours to apply to all assignments (voluntary ones from the call book and mandatory assignments from the seniority list) there would no need to say when mandatory assignments should start as the 72 hours would (if intended to apply to both kinds of assignments) would encompass or subsume the entire process (beginning, middle and finish).

Accordingly, the LOA only specifically addresses when the mandatory assignments must begin (immediately following the completion of voluntary assignments) and not when these assignments must be finished. In this sense, the

grievance is flawed. However, while there is no express limitation as to when Christmas mandatory overtime assignments must be made, there was a general agreement at the hearing that the purpose of having the call book close two weeks earlier was to let people know where they stood with respect to employment responsibilities on Christmas so they could make plans accordingly. Thus, the Company must start mandatory assignments immediately following the voluntary assignment and proceed thereafter with reasonable diligence when making mandatory assignments for known Christmas overtime and the process cannot be delayed unnecessarily or without good cause.

This point is made in direct response to one of several misguided arguments made by the Company at the hearing. First, the Company suggested that it had a full 72 hours to process the voluntary assignments and wrongly argued that mandatory assignments didn't need to be started until after the 72-hour period ended. For example, the Company stated on page 19 lines 14-19 that the 72 hours expired December 14 and "after they expire, then we start to notify—then we start the mandatory shifts." Similar statements were repeated (i.e. transcript page 21 "after that 72 hours then we begin mandatory overtime assignment").

This defense is simply inaccurate and inconsistent with the language of the LOA that requires mandatory assignments begin "immediately following the completion of voluntary assignments". Thus, if the voluntary assignments can be

completed in 24 or 40 or 48 hours (rather than the maximum 72 hours) the mandatory assignments must begin “immediately”. In other words, if needed the Company can take up to 72 hours but if not the mandatory process starts upon the completion of the voluntary process.

In this regard, the Company was equally misguided in its suggestion at the hearing that mandatory overtime assignments could be delayed because of the possibility that “five people might call in on the 24<sup>th</sup>”. (See transcript page 130) This notion had to be redirected because there was an apparent confusion or failure to recognize the distinction between “known” overtime (that can be anticipated at the time the call book is closed) and unknown or unanticipated overtime vacancies that might occur closer to the holiday due to on-the-job injuries, legitimate illness or disciplinary matters. The Company cannot parlay the possibility of unknown overtime vacancies into an unlimited extension of the period during which known mandatory overtime assignments must be made to employees.

Similarly, the fact personal contact cannot be made with an individual as the mandatory overtime/seniority list is worked does not extend the period either. Most everyone at the hearing understood that if it were anticipated that face-to-face or voice-to-voice contact would be made before the holiday (i.e. that the assignee was scheduled to work before the holiday) that employee would be considered provisionally assigned (but not notified) for purposes of fulfilling the Company’s



needs. In effect, a place is held for them and the mandatory assignment process of known overtime does not grind to a halt while awaiting personal notification. The Company moves to the next person. Nor is the process extended merely because it is possible people might sign the call book below the line.

There still remains the questions (1) whether the Company started the mandatory assignment process “immediately following” the completion of the voluntary assignments and (2) whether the Company proceeded with reasonable diligence in making mandatory assignments for known overtime.

Regarding the first question, the evidence fails to show precisely how much a delay there was between completion of the voluntary assignments on the 13<sup>th</sup> and the start of the mandatory assignments on the 14<sup>th</sup>. The delay could have been a few minutes and as much as 24 hours. Similarly, the records kept by the Company do not necessarily show when the first attempt at personal contact was made or, in other words, when the employee was considered a placeholder and the next employee was attempted to be contacted. The records indicate only when personal contact was ultimately made—which might have been successful on the first attempt or days later. For example, personal contact with [REDACTED] about his mandatory assignment was not made until December 18.

The reasonableness of the Company’s efforts at proceeding with mandatory assignments with reasonable dispatch should be judged on the first attempt at

contact assuming the employee is not at work and can't be informed face-to-face. However, it is unacceptable for the Company not to create meaningful records of its attempts. For example, in this case the Administrative Supervisor acknowledged that other than his memory there was no way to tell when he first tried to make personal contact with people who were to be assigned mandatory overtime. The Union is entitled to records with this information in addition to the records the Company actually kept and produced. Frankly, keeping records with this information is in the Company's interest. The records it relied on don't explain away, for instance, the four day delay between the 14<sup>th</sup> (when the mandatory process started) and the 18<sup>th</sup> when [REDACTED] was personally contacted. The incompleteness of the records leaves the Company susceptible to legitimate claims that the delay was unnecessary.

In summary, the Union has not satisfied its burden (1) to support its claim that mandatory assignments must be completed within 72 hours of the close of the call book and (2) to show that individual mandatory assignments were unreasonably or unnecessarily delayed such that individual remedies are appropriate. The Company, however, had a hand in this failure as their records were inadequate to demonstrate the diligence of its efforts. In prosecuting any future claims of unjustified delays in mandatory assignments, the Union is free to argue that an adverse inference should be drawn from the Company's failure to

produce records that have adequate information to determine if the Agreement was violated.

**AWARD**

The grievance is resolved as  
set forth in the Opinion.



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Gil Vernon  
Arbitrator

Dated this 24<sup>th</sup> day of August, 2015.