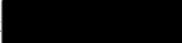


IN THE MATTER OF ARBITRATION )  
)  
)  
SOUTHWEST AIRLINES CO. )  
)  
)  
and )  
)  
)  
TRANSPORT WORKERS UNION OF )  
AMERICA, AFL-CIO, LOCAL 555 )

Case No. BNA-R-1382/13

Bill Venckus, for the Employer  
Mark Waters, for the Union  
Before Matthew M. Franckiewicz, Arbitrator

**OPINION AND AWARD**

This arbitration proceeding involves the discipline issued to Grievant 

A hearing was held on December 2, 2013, at Dallas Texas. Both parties called, examined and cross examined witnesses, and offered documentary evidence. Both parties filed briefs. The record closed with the exchange of briefs on January 14, 2014.

**Contract Provisions Involved**

ARTICLE FIVE  
CLASSIFICATIONS

SECTION ONE  
RAMP AGENT/PROVISIONING AGENT

\* \* \*

T. Provides friendly service to all co-workers and Customers.

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.

B. Representation Requirements. The Union and the Company shall be represented at each location. These representatives shall be empowered to settle all local grievances without setting precedent of any kind. The Local Representatives for the Union shall be selected from members of the Union who qualify under Article Two. The Local Representative for the Company shall be the Manager or his designee. Neither party shall be represented by legal counsel through and including the System Board. Legal representation shall be permitted in the case of Arbitration.

C. Cost of Arbitration. It is understood and agreed that the cost of arbitration shall be borne by the losing party.

G. Fact-Finding Procedures. No covered Employee shall be subject to discipline involving loss of pay or discharge without first having the benefit of a factfinding, with the right to have a Union representative present, in accordance with the following procedures:

1. No Suspension. In circumstances where no suspension is imposed:

a. The Employee shall be advised, in writing, with a copy to the local representative of the Union, of the nature of the factfinding not later than ten (10) calendar days from the time the Company becomes aware of the incident concerning which the factfinding shall be convened.

b. The factfinding shall be held within five (5) calendar days from the date such notice is given to the Employee and the local representative of the Union; and

c. The Company shall render its decision (inclusive of any discipline), in writing to the Employee, within five (5) working days after completion of the factfinding, and a copy of the decision shall be delivered to the local representative of the Union.

\* \* \*

L. Interpretation/Application of Agreement. In the event of a grievance arising over the interpretation of, or application of, this Agreement, or in the event of a disciplinary action other than discharge, the following steps shall apply. However, if the action involves discharge or a Union grievance concerning a change in Work Rules, it shall proceed to sub-

paragraph 3, below. Decisions made pursuant to Steps 1 through 3, below, shall not constitute precedent of any kind unless agreed to, in writing, by the Union and the Company.

14. 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.

### The Facts<sup>1</sup>

Grievant [REDACTED] is a Southwest employee with about six years service. Currently she is a Ramp Agent at Denver, although at the time of the events involved in this case she had been working at Nashville, Tennessee for about three months.

This case involves a Letter of Warning issued to [REDACTED] dated July 5, 2013. It states:

A fact-finding meeting was held on June 25, 2013 to discuss your inappropriate behavior on June 24, 2013. Present at this meeting were you, TWU Representative [REDACTED] Ramp Agent [REDACTED] Ramp Supervisor Dan Ottolini, and myself.

After considering the matters discussed in the fact-finding, we have concluded that you were disrespectful to BNA Manager of Customer Service Laura Sullivan and you were less than honest in your statements during the fact-finding. Such conduct was a violation of the Southwest Airlines' Ground Operations Basic Principles of Conduct, including, but not limited to, the following:

4. Complete coordination with Coworkers and Supervisors is required to provide harmonious working conditions.
8. Restricting work, using threatening or abusive language, intimidating, or interfering with fellow Employees or their work.
26. Fighting, abusive and disrespectful behavior to a fellow SWA Employee or Customer.

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<sup>1</sup> Based on the testimony of Mike Holcomb, which I credit, that Union Exhibit 5 was a "rogue" document, unauthorized and disavowed by Southwest, I have given no weight to this Exhibit in my findings.

Based on the above and because of your actions, this letter will serve as a Letter of Warning. Please be advised that the behavior that you have displayed will not be tolerated. Any further violations of this nature will result in discipline, up to and including termination. If you are unclear as to what is expected of you, or if there is anything that we can do to assist you, please do not hesitate to contact a Supervisor or Manager.

The underlying events occurred in an elevator at the Nashville airport. Witness Scott Hamelin testified, and I am sure he is correct, that the entire incident took less than a minute. Card swipe evidence (Union Exhibit 2) confirms that the event took no longer than one minute.

Some aspects of the incident are undisputed, and others are controverted.

There is no dispute that in order to travel from the ticket counter area to the floor below at the terminal, an employee must swipe his or her badge<sup>2</sup> at a reader outside the door to the secure area. Each employee is required to swipe, enter, and then close the door. A second employee is not permitted to pass through the door along with the co-worker who swiped the card. Instead, the second employee must allow the door to close, then swipe his or her own card, and finally open and go through the door. Passing through on another employee's swipe is called piggybacking, and it is recognized by all as unauthorized.

On the other side of this door is a small elevator. From testimony and a video, it appears that the door to the elevator is about two feet wide. The elevator car itself appears to be roughly four or five feet square, large enough to hold four people and perhaps as many as six uncomfortably.

The elevator can be summoned by pressing a button, and an employee can then enter it. There is another reader inside the elevator, and an employee must swipe his/her badge there before the car will move. However if a different employee on the floor below presses the button there, the elevator will descend without a card swipe.

While it is physically possible to ride the elevator without a swipe if someone on a different floor presses the button there, the Parties dispute whether it is permissible for an employee to ride it in this manner without swiping. Likewise, the Parties disagree as to whether an employee, after swiping through the door to the secure area, may ride the elevator along with a co-worker who has swiped in the elevator, without also swiping his or her own badge.

It is undisputed that on June 24, 2013, Nashville Customer Service Manager Laura Sullivan, accompanied by two technical support employees, Scott Hamelin and Michael Chheung, went through the door from the ticket counter. The three got on the elevator, and Sullivan swiped her card. Hamelin also had a SIDA card, but at the time Chheung did not. Before they departed for the floor below, they saw █████ coming and held the elevator. At the time Sullivan, Hamelin and Chheung did not know █████ identity, but probably were aware that she was a Southwest employee, for she was wearing a Southwest badge. Similarly, █████ did not know Hamelin, Chheung or Sullivan, although Sullivan was wearing a Southwest uniform. Hamelin and Chheung were in street clothes. Sullivan could have deduced that █████ must have a SIDA badge, since █████ was able to get through the door from the ticket counter.

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<sup>2</sup> This badge is a Secure Identification Display Area (SIDA) badge issued by the Airport Authority, and is not the same as a Southwest employee badge.

The elevator descended to the floor below, and at this point the factual dispute begins.

As Sullivan described it, she exited the elevator first, followed by Hamelin and then Chheung [REDACTED] being the last one off the elevator. According to Sullivan, she asked Hamelin to swipe his badge and he did so. [REDACTED] started out, and then kicked the door as it was starting to close. Sullivan testified that when [REDACTED] kicked the door, she turned around and held the elevator door open for [REDACTED] using both hands. She testified that she said to [REDACTED] please swipe your badge, but [REDACTED] instead kicked the elevator door. Sullivan said you just need to swipe your badge, and [REDACTED] said just get out of my way. Essentially this same exchange took place three times before [REDACTED] did swipe her badge. After the third repetition, Sullivan said that she was the Customer Service Manager. [REDACTED] yelled something as she walked off. Sullivan denied that she held [REDACTED] in the elevator.

According to Scott Hamelin, Sullivan asked him to badge out and he did so. Sullivan was the first one off the elevator.<sup>3</sup> Hamelin exited, followed by Chheung. He heard a loud noise, a bang, which he described as sounding metallic. He heard loud voices, and thought [REDACTED] was angry and was speaking loudly, but he could not discern the words being said because the area is noisy. He did recall that Sullivan asked [REDACTED] to swipe shortly after Sullivan had asked him to do so. Sullivan was at the elevator entrance, and [REDACTED] would not have been able to exit without mowing down Sullivan. But he also stated that he did not see Sullivan trying to hold the elevator door open, he did not see her blocking the elevator, and he did not see her with both arms upraised and extended to the sides. He did not observe any physical contact between [REDACTED] and Sullivan.

Michael Chheung testified that Sullivan asked Hamelin to swipe, and when the elevator door opened, she asked [REDACTED] to swipe. [REDACTED] said why do I have to, I never did before. Sullivan replied you have to swipe, otherwise you are not allowed to get out. He described [REDACTED] as very angry, yelling, screaming, and kicking the door. Chheung himself wanted to get out but felt he could not because Sullivan was by the door, and he "sneaked" past.<sup>4</sup> He had to get around Sullivan to get out. Of course, Chheung did not swipe himself, since he did not have a SIDA card. He depicted Sullivan as holding the door open, with both hands up. He did not see physical contact between Sullivan and [REDACTED]. He stated that Sullivan made sure [REDACTED] swiped before she got out.

[REDACTED] testified that when the elevator stopped, the two males exited, followed by Sullivan. When she stepped off, Sullivan threw up her arms at the sides of the door, preventing [REDACTED] exit. Sullivan threw her chest into [REDACTED] and said you need to scan. [REDACTED] replied you need to let me off or I will report you. Both repeated themselves. The door started to close and [REDACTED] stuck out her foot to keep it from closing. Sullivan said once more, you need to scan, and [REDACTED] replied, I didn't know I had to. She said that she felt cornered and restricted, and was "freaking out."

[REDACTED] stated that she was not trained that she was required to swipe the elevator card reader if another employee had already done so. Her training was that she needed to swipe personally to get into a secure area, but once inside, she needed to swipe only when it was necessary to do so in order to move the elevator.

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<sup>3</sup> On cross Hamelin stated that he preceded Sullivan off the elevator.

<sup>4</sup> [REDACTED] is at least half a foot taller than Chheung. Thus it would have been more difficult for her to "sneak" past Sullivan.

██████████ husband, testified that his training is that if he was with other employees, each had to swipe at the door from the ticket counter, but the first person at the elevator could swipe to move the elevator for all, and that the others did not need to swipe at the elevator.

Union Representative ██████████ stated that at Nashville, everyone swipes at the door to the secure area, but only the first person on the elevator swipes again there.

██████████ the employee trainer who trained ██████████ said that when accompanying employees for training, she shows them that all must swipe at the door between the ticket counter and the secure area. At the elevator, someone pushes the button, and one employee swipes on the elevator to enable it to move, but if additional people enter the elevator, they need not swipe on the elevator since they are already in the secure area. To move the elevator "a" badge must be swiped, but not all those riding had to swipe.

██████████ testified that all swipe at the access door from the ticket counter, but then all get on the elevator and only the closest one to the reader swipes to activate the elevator. He has trained hundreds of employees, and teaches them this same procedure.

The Parties stipulated that:

the following witnesses will testify that they did not witness the actual event. The listed witnesses will testify that it is their belief that it is not necessary for all employees to swipe in the elevator and that only one employee can swipe and all can come down the elevator together into the SIDA area. These witnesses will also say that they haven't reviewed Company Exhibit No. 8. All will testify the Southwest ground ops manual document, Union Exhibit No. 4, on how to challenge people is proper. Also the witnesses, ██████████ former sup; ██████████ former sup; ██████████ former trainer or ramp trainer, he's a current trainer; ██████████ were not present at the System Board.

Training in SIDA procedures is provided by the Department of Public Safety, rather than Southwest. The training includes the following statements:

Piggybacking occurs when someone follows through an access point without using one's own ID badge unless under proper escort procedures. This includes elevators that have access to a restricted area.

If a person knowingly allows someone through an access point without the other person using their own ID badge, both persons will be cited for piggybacking.

This includes using your five-digit pin code to enter a secured area. Everyone must use their own code.

Southwest's security instructions include the following:

The air carrier shall challenge unauthorized or unbadged persons in nonpublic areas and shall report the presence of such persons to a Supervisor and LEO as appropriate. The Employee shall not attempt to restrain the unauthorized individual.

## **Issue**

The issue, as agreed to by the parties, is: Did the Company have just cause to discipline the Grievant; if not what is the appropriate remedy.

## **Position of Management**

The Company cites the Basic Principles of Conduct and avers that the Grievant was aware of her responsibilities. It contends that her conduct on June 24 violated the Basic Principles in that she was disrespectful, used threatening abusive language, and failed to work in a harmonious way.

It submits that the Grievant's version of the event is uncorroborated and not credible. It considers that she was not sure how things happened or else attempted to validate her story. It contrasts neutral witness Chheung, stating that he described Grievant as yelling, screaming and kicking the elevator door.

It disputes the claim that swiping on the elevator was unnecessary. In any event, it considers the real question to be whether the Grievant behaved inappropriately. It regards the request that she swipe her badge as completely reasonable.

The Employer maintains that it reviews each case individually, and that the circumstances of the current case are unique. It maintains that it did not abuse its discretion, and urges that the arbitrator should not substitute judgment for the disciplinary decision and that leniency is the prerogative of the Employer.

It asks that the grievance be denied.

## **Position of the Union**

The Union maintains that the Company lacked just cause to issue a warning letter.

It observes that Grievant [REDACTED] was not yet on the clock at the time of the incident since her shift did not start until 12:30.

It asserts that the fact finding was not fair and objective, noting that the notice of fact finding refers to "your inappropriate behavior." It contends that the written statements of the two men present do not cite any "bad" behavior that would warrant discipline. It objects that witness investigatory statements were sent to Sullivan, and it questions why no statement prepared by Sullivan was produced.

It faults Sullivan for failing to introduce herself and instead blocking the elevator, and for her "aggressive" behavior. It further avers that under the SIDA procedure, one should challenge but not detain someone who appears to be piggy backing. It deems that Sullivan, not [REDACTED] was acting in a disrespectful manner. It depicts Sullivan as blocking a person she did not even know, and herself failing to follow the "Golden Rule." It concludes that she overreacted when she erroneously thought there was a security violation.

It questions how Chheung and Hamelin, five months after the event, could recall much more than they included in their contemporaneous statements. It disputes that [REDACTED] was less than honest at the fact finding.

It cites the "monkey memo" (Union Exhibit 5) as showing supervisory disregard and disrespect for employees.

It asks that the grievance be sustained and that the warning letter be purged.

## Analysis and Conclusions

Based on the testimony of multiple witnesses, I accept that Southwest employees at Nashville were not instructed that they were required to swipe on the elevator if they had already swiped in at the secure door from the ticket counter, and if another employee had swiped at the elevator. Thus what Grievant [REDACTED] did on June 24 was in keeping with the way other employees accessed the elevator, and there was no reason for her to believe that her failure to swipe again in the elevator was in any way improper.

The SIDA procedure is less than completely clear with respect to swiping a second time in an elevator. The procedure states:

Piggybacking occurs when someone follows through an access point without using one's own ID badge unless under proper escort procedures. This includes elevators that have access to a restricted area.

An elevator may be an access point, but whether it is, is not clear when the elevator travels only between one restricted area and another restricted area, so that the employee must have swiped already before reaching the elevator.

I need not resolve the factual dispute as to the exact order in which the passengers exited the elevator. The material point is that Sullivan exited before [REDACTED]. I find as a factual matter that on exiting and asking [REDACTED] to swipe, Sullivan positioned herself in the elevator door, in a posture like a letter X or Y, with arms outstretched. (The record does not indicate how her feet were situated.)

[REDACTED] is fairly tall, and it would have been more difficult for her than for Chheung to squeeze past Sullivan. She was effectively, although of course very briefly, confined in the small elevator, whose door Sullivan was blocking. It is not surprising that [REDACTED] felt claustrophobic under the circumstances. A person she did not know, accompanied by two other strangers whose clothing indicated that they were not Southwest employees, was blocking her exit from the elevator and telling her that she had to swipe her badge, contrary to what [REDACTED] understood the practice to be.

As a witness [REDACTED] was soft spoken, but it may well be that in a stressful moment, she raised her voice to Sullivan. Nonetheless, there is no evidence that [REDACTED] used any profanity or derogatory term, nor that she said anything that could be regarded as threatening or insulting to Sullivan. She told Sullivan to let her out of the elevator or else she would report Sullivan. Nothing in the content of her words could be considered inappropriate.

There was testimony that [REDACTED] kicked the elevator door. As far as I can determine, this amounted to nothing more than an attempt to keep the elevator door from closing, and in no way was directed toward Sullivan.



The entire event, as stated above, lasted less than a minute. [REDACTED] was apparently agitated and fearful over being prevented from exiting the elevator. She did not know who Sullivan was, and therefore cannot be deemed insubordinate. She may have been loud and have used more force than necessary to prevent the elevator door from closing, but this was a brief reaction in a stressful situation. She did not make physical contact, did no harm to the elevator, and said nothing that can be deemed inappropriate. Under all the circumstances, I conclude that [REDACTED] did not engage in misconduct, and that just cause for discipline was lacking. It follows that the grievance must be sustained.

### **Award**

The grievance is sustained. The Company shall revoke the discipline and remove any reference to it from [REDACTED] records. Pursuant to Article Twenty Section One (C) of the collective bargaining agreement, the arbitrator's fee and expenses are allocated to the Company.

Issued January 29, 2014

Matthew M. Franckiewicz