
IN THE MATTER OF ARBITRATION

OPINION AND AWARD

between

SOUTHWEST AIRLINES

**Case No. BUR-R-1896/14
(Final warning of**

and

[REDACTED]

**Transport Workers of America
Local 555**

Gil Vernon, Arbitrator

APPEARANCES:

On Behalf of the Union: Mike Roach, District VII Representative—
Local 555

On Behalf of the Company: Amit Misra, Attorney— Misra Legal
Group

I. ISSUE

The issue before the Arbitrator can be framed as follows:

“Did the Employer have just cause to issue a “final warning” to [REDACTED]
on August 21, 2014 and, if not, what is the remedy?”

II. BACKGROUND

[REDACTED] (“Grievant”) was hired on January 7, 2008 in San Diego
and after three years there transferred to Burbank California (“BUR”) as a Ramp
Agent. He was working in that position on August 7, 2014. He was driving a tug

towing loaded luggage carts from T-point to Gate A-1. It is a congested area with clearances to stationery equipment and fixtures that are more narrow than typical. Ramp Agents are aware of this and are reasonably expected to proceed with caution when driving in the area. One of the fixtures in the area is a potable water tank that is plumbed with a rigid copper supply pipe.

It is not disputed in this record that at approximately 5:00 p.m. on the day in question a hard-sided bag was protruding from one of the trailing units (about a foot) in a string of carts being towed by the Grievant. Grievant's tug cleared the tank but the bag contacted the tank. The Grievant stopped when he felt the contact. Grievant immediately reported the incident to supervision. Upon inspection the tank (which was not bolted to the building or the ramp as some are) had shifted as a result of the contact and the horizontal copper supply pipe was bent (kinked) at a moderate angle. The cabinet rotated about 20 degrees. There was a slight leak and the pipe was repaired by airport personnel by cutting out the kink and installing a union fitting to join the two pieces of pipe.

Subsequent to a fact-finding meeting, Grievant was issued a final warning letter (which is typically the last step in the Company's progressive discipline system prior to termination). The letter was dated August 21, 2014 and read as follows:

A fact-finding meeting was held on Tuesday August 19th, 2014 to discuss the damage

caused to the potable water tank at gate 1 on August 7th, 2014. Present at this meeting were you, TWU Representative [REDACTED] and Ramp Supervisors Chris Loffarelli & Tory Cisneros.

After a thorough and complete investigation into this matter, and after review of the testimony and documents provided at the fact-finding, we have concluded that you did hit the potable water tank while dropping of bags at gate 1 on August 7th, 2014 causing damage which is not consistent with Southwest Airline's expectations. This behavior is unacceptable, and is in violation of the Southwest Airlines Ground Operations Basic Principles of Conduct, including, but not limited to, the following:

14. Performing your job in a careless, negligent, or unsatisfactory manner.
28. Failure to comply with safety rules or regulations.

Based on the above and because of your actions, this letter will serve as a Final 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 record indicates Grievant's disciplinary record was clear and that his performance appraisals were never less than satisfactory in every category and more often than not exceeded expectations. Indeed, in his last appraisal prior to the incident (issued in February 2014) his supervisor in the narrative section of the form described his job performance as "amazing". One performance appraisal mentioned his concern for safety in particular. It read as follows:

I would like to recognize Ramp Agent [REDACTED] for his outstanding work ethic. I have observed [REDACTED] and he takes great pride in performing his job with a Fun Loving Attitude. He is proactive on the Ramp by always watching out for potential safety concerns that could impact our Southwest employees and customers. When issues arise regarding safety, [REDACTED] communicates in a professional manner the safety problem. He also gives his advice and possible solutions on how the company or individuals can correct this safety situation. [REDACTED] also displays a Servants Heart and Warrior Spirit by always being proactive in the various ramp duties that he performs and

is always willing to lend a hand to assist his fellow Agents. Most of all [REDACTED] is an all around great person and you could not find any one better to represent Southwest Airlines than [REDACTED]. I commend him for his work and dedication to the Southwest team. Keep up the great work [REDACTED].

The above quoted performance appraisal is relevant because it was issued in the 12 months prior to the discipline. Grievant has a number of “commendations” in his record.

When the Parties couldn’t resolve the grievance that was filed to protest the degree of discipline, the matter was appealed to arbitration. A hearing was held December 10, 2014. Following receipt of a transcript of the proceedings, post hearing briefs were filed January 29, 2015.

III. OPINION AND DISCUSSION

This case is straightforward. Grievant accepted responsibility for the bag colliding with the tank. The issue separating the Parties relates to the penalty (a “final” letter of warning). Boiled to its essence the critical question is whether the penalty is reasonably commensurate with all the relevant circumstances.

After consideration of the evidence and the arguments it is the conclusion that a penalty as serious as a “final” warning is not within a reasonable range of penalties under the facts of this case.

First and foremost is the Grievant’s record. His supervisor acknowledged at

the hearing (transcript page 25) that this was Grievant's first incident of any type. His performance appraisals are good too. However, his performance reviews are what everyone would hope for any employee and too much credit shouldn't be given for doing one's job as is expected. Nonetheless, the Grievant's record shows he is particularly safety conscious. In a discipline matter where safety is an issue, this militates in favor of a penalty less than a final warning. In addition to his incident-free record, he has demonstrated to be responsive and sensitive to this all important job requirement.

In this regard, it is also to Grievant's credit he accepted responsibility for the incident. This is particularly in his favor because forensically speaking he could have tried to allude guilt by arguing the bag had shifted in route and/or claiming that it was loaded improperly by someone else.

Then there is also the matter of the condition of the tank. It was not bolted in place. While this didn't cause the collision it is easy to conclude—as the Union argued—that the fact it could be jarred out of place certainly contributed to the damage that was limited to a kink in the copper pipe. If the tank was attached to the ramp, the protruding bag may have simply shifted position in the cart. The mere fact that there was “damage” is not enough to justify a “final” warning. This damage was minor and was easily addressed and caused no operational issues.

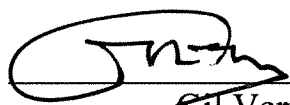
Given the nature of the incident (relatively minor without any particular

safety, a penalty that takes him to the doorstep of termination for his next offense is unnecessary and excessive. If the Arbitrator issued the discipline in the first instance, he likely would have considered a letter of instruction sufficient. This is not, however, the Arbitrator's role. In this case, the maximum penalty within the range of what could be considered reasonable and appropriate is the typical simple written warning (without reference to it being the final step in the progressive discipline process).

As a remedy, the final warning is reduced to a simple warning. The Grievant's record shall so reflect.

AWARD

The discipline of a final warning was not for just cause and it is modified per the Opinion.



Gil Vernon
Arbitrator

Dated this 25th day of February, 2015.