

ARBITRATION AWARD

IN THE MATTER OF ARBITRATION BETWEEN

SOUTHWEST AIRLINES COMPANY,)

COMPANY)

And)

**TRANSPORT WORKERS UNION)
LOCAL UNION 555 AFL-CIO)**

UNION)

Issue: Discharge

Grievance No. DEN-R-2161/2016

Grievant: [REDACTED]

DATE OF DISCHARGE: October 23, 2016

DATE OF HEARING: January 18, 2017

**DATE OF CLOSING OF THE
RECORD:** March 6, 2017

**DATE OF DECISION AND
AWARD:** March 30, 2017

APPEARANCES:

COMPANY: Erica L. Berencsi, Esq.

UNION: Curtis Clevenger, Grievance Specialist

ARBITRATOR: Thomas A. Cipolla

I. BACKGROUND

Southwest Airlines Company (hereinafter "Company") and the Transport Workers Union of America, AFL-CIO Local 555 (hereinafter, "Union"), are parties to a collective bargaining agreement (or, "CBA") in force at all times relevant herein. The Union is the sole and exclusive bargaining agent for employees of the Company based in the United States, its territories and possessions who comprise the class and craft of Ramp, Operations, Provisioning and Freight Agents. [REDACTED] (hereinafter, "Grievant") was employed by the Company as a Ramp Agent at the Denver International Airport (or, "DIA"). As such, he is covered by the collective bargaining agreement in force.

The Grievant worked for the Company for approximately 1 year and four months until his termination on October 23, 2016 for allegedly bringing a loaded firearm to work and because his badges to secure and/or sterile areas of the DIA were revoked. The Union filed a timely grievance, and the matter went through the grievance procedure to arbitration.

A hearing was held on January 18, 2017 in a conference room at the Doubletree Inn at Love Field in Dallas. The parties were represented as indicated on the cover sheet. They made argument, examined and cross-examined witnesses, introduced documentary evidence, filed post-hearing briefs and otherwise presented their cases in full. A transcript of the hearing was made by certified court reporter. Finally, the Grievant was present during the entire hearing.

II. ISSUE

Was the Grievant discharged for just cause, and if not, what is the appropriate remedy?

III. RELEVANT DOCUMENTS

Excerpts from the Agreement, Joint Exhibit No. 1

ARTICLE TWO SCOPE OF AGREEMENT

C. **Reasonable Work Rules.** Employees covered by this Agreement shall be governed by all reasonable Company rules and regulations 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 covered Employees and the Union Office prior to becoming effective.

D. **Management Rights.** The right to manage and direct the work force, subject to the provisions of this Agreement, is vested in and retained by the Company.

**ARTICLE TWENTY
GRIEVANCE/ SYSTEM BOARD/ARBITRATION
DISCIPLINE AND DISCHARGE**

15. **Arbitration/Function and Jurisdiction.** The functions and jurisdiction of the Arbitrator shall be as fixed and limited by the Agreement. He shall have no power to change, add to, or delete its terms, and shall have jurisdiction only to determine issues involving the interpretation or application of this Agreement. Any matter coming before the Arbitrator, which is not within said 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 limitation 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, she/he may modify or remove the penalty.

Excerpts from the Guidelines for Employees

5.3 Handgun/Weapon Policy

Unauthorized possession of firearms, incendiary devices, and/or weapons of any kind on Company property (whether leased or owned) is strictly prohibited. Violation of the foregoing policy will be grounds for disciplinary action up to and including termination. In those limited jurisdictions that allow storage of lawfully possessed weapons in locked vehicles in worksite parking areas outside airport secure areas, applicable state law will apply (for example Indiana, Oklahoma and Texas, among others). For more information, contact Corporate Security or the General Counsel's Office.

5.4 Workplace Violence Prevention

To ensure a safe work environment for all Employees and to minimize the risk of violence, all Employees should become familiar with the Workplace Violence Prevention Policy and have a clear understanding of their role in reporting workplace violence. Southwest Airlines maintains a "Zero Tolerance" policy. Workplace violence will not be tolerated at Southwest Airlines, and any Employee found to be in violation of this policy will be subject to disciplinary action, up to and including termination of employment.

What is workplace violence?

Workplace violence is defined as actions or words that endanger or harm another individual, or result in that individual having reasonable belief that he or she or someone else is in danger. More specifically, any acts of physical violence, threats of physical violence, damaging of property, harassment, intimidation, or other threatening behavior that occurs in the workplace, at Company sponsored events, or has a connection to the Company or affects the workplace, is

prohibited and will not be tolerated. It can affect or involve Employees, Customers, contractors, and/or vendors.

Examples (includes but is not limited to the following):

•Unauthorized possession of a weapon while on Company property (including Employee parking lots)

5.4.1 Employees Responsibilities

It is the responsibility of all Employees to ensure Southwest Airlines is a safe workplace. As provided in The Golden Rule, our Mission Statement, and our Policy Concerning Harassment, Sexual Harassment, Discrimination & Retaliation all Employees must treat each other, our Customers, vendors, and/or contractors with respect at all times. Refer to 20 Addendum for San Juan Operations for information on this topic for San Juan Employees.

Ground Operations - Basic Principles of Conduct

Each Employee is expected to be familiar with and adhere to all Company policies and procedures. Any violation of the following will be grounds for disciplinary action. Discipline may range from a reprimand to discharge, depending on the particular violation and the circumstances. The following list is meant to be representative only, and in no way is it intended to be a complete list of all violations of our Basic Principles of Conduct.

2. An Employee on duty and in uniform reflects the SWA attitude to our Customers on a personal basis. It is imperative that you remember that your appearance, attitude, and conduct, whether on or off duty, may be a reflection on SWA, and that you act accordingly.

11. Possession of or bringing firearms, bombs, or weapons of any kind on Company property.

25. Southwest does not want to interfere in the personal affairs of Employees, however, conduct on or off the job which is detrimental to the Company's interest including unacceptable or immoral behavior on Company property or any adverse conduct that reflects on the Company, whether on or off duty, may be cause for immediate dismissal.

32. Each Employee is expected to be familiar with and adhere to all federal security requirements and all Company policies and procedures. Any failure to comply with the security procedures will be grounds for disciplinary action. With regard to certain security violations, governing bodies of airport security (FAA, DOT, TSA, etc.) may impose penalties. Southwest Airlines has the right to assess appropriate discipline outside of these penalties.

IV. SUMMARY POSITIONS OF THE PARTIES

A. COMPANY

1. The Grievant brought a loaded firearm to work.
2. The Grievant's badges were confiscated, suspended, and revoked.
3. The Grievant was discharged for bringing a loaded firearm to work and because his badges were revoked.
4. There is no reason to believe the Grievant can currently hold a SIDA badge.
5. It is undisputed that the Grievant brought a loaded firearm to work.
6. The Grievant's intent is not relevant.
7. Termination is appropriate because in bringing a loaded firearm to the workplace is in contravention of the Company's Workplace Violence Policy.
8. Termination is also appropriate because the Grievant's SIDA badge was revoked due to bringing a loaded firearm to DIA.
9. The Union failed to establish disparate treatment of the Grievant.
10. Based upon the foregoing, the Company had just cause to terminate the Grievant's employment.
11. Therefore, the grievance should be denied.

B. UNION

1. It is the Union's position that the Company failed to meet its burden of just cause, as required in the Collective Bargaining Agreement, in the termination of [REDACTED] for the following reasons.
2. The three reasons cited by the Company in the Grievant's termination letter for his discharge are either incorrect, misleading, or are a result of the Company's own intentional inaction. 1) The Grievant did not bring a firearm "into Denver International Airport" (DIA). The Grievant was at an airport employees' parking garage two miles away from the concourses and had just entered a secure area adjacent to the parking garage, where airport employees must go to catch the shuttle buses. 2) The only reason DIA had not reinstated the Grievant's SIDA badge, by the end of the Grievant's Company approved personal leave of absence, was because the Company did not

send DIA the required paperwork. Also, 3) the Grievant was not at termination level in regards to the Attendance Control Program, and the Company agreed to this at arbitration.

3. There has not been a single document produced, to the Union or the arbitrator, establishing that the Grievant had ever been notified of the policies he is alleged to have violated. As important, there is nothing on the record that indicates that the Grievant was ever made aware of the possible or probable consequences of a violation of the policies that the Company is alleging he violated.

4. The actual incident that gave rise to the instant case did not occur "on Company property". The incident of October 2nd, 2016 did not occur on property that is owned, operated, or even leased by the Company. It occurred at a DIA employee's parking garage two miles from where the Grievant actually worked. The parking garage is utilized by the employees of many different businesses and vendors at the airport. It is the property of DIA. DIA performed a formal review of the incident on October 12th, 2016. On October 14th, 2016 the Grievant provided DIA's with the documentation that DIA had requested. By October 17th, 2016 DIA had verified the documentation and cleared the Grievant, pending documentation from Southwest, to have his SIDA privileges reinstated.

1. V. DISCUSSION AND DECISION

(Some of the evidence and/or some of the argument may be brief and some may not be set forth where it is not necessary for the disposition of the case.)

Most of the operative facts in this case are not in dispute. On October 2, 2016, the Grievant went on his way to work. His starting time that day was 5:00 a.m. He parked his car in the employee parking garage. The Grievant exited his vehicle and forgot to take a pistol out of his backpack and leave it in his car. He then walked across the parking garage, with his backpack, to the turnstile to enter the area where employees catch the shuttle buses over to the concourses.

As the Grievant went through the turnstile he entered a secure area. Immediately on the inside of the turnstile he handed his backpack to a DIA contractor HSS. HSS is the contractor that inspects any items that an employee carries in (backpacks, lunch boxes, purses, etc.) through this entrance. The HSS employee saw the pistol in the backpack. The Grievant explained to her that he forgot to take it out of his backpack and asked her if he could go back and put it in his car. She replied in the negative and motioned that the cameras in the area were on and recording

this. She asked the Grievant to take a seat as she began the notification protocol for such incidents.

The end result was that DIA took the Grievant's badges and cited him for a violation. It also suspended his SIDA privileges pending a hearing and the Denver police arrested him.

The Grievant explained that he had been target practicing on his cousin's property the previous day, October 1. At the end of the day, he put his pistol in his backpack; however, instead of going home, he went to the apartment of a co-worker who lives close to DIA to get some sleep before going to work. He got up and left to go to work around 4:00 or 4:15 a.m. He still had the pistol in his backpack. He said it was his intention to leave the backpack in his car.

However, he did not have his uniform on so he took his uniform out of the car and put it in his backpack (apparently not recalling his pistol was still in the backpack). He testified that when he got to the turnstile he gave the HHS security lady his backpack and sat down to "play with his phone." When she discovered the gun, she looked at him and he looked at her and it was then that he realized his pistol was still in the backpack. He told her he did not know that he had left it in there and asked if he could take it and put it in his car. She looked up at a camera above and told him she could not let him do that because they were on camera. Sometime after she got on her radio to report the matter, he said that the Airport Police came and arrested him – pulling both his Southwest Company badge and his SIDA badge.

The next day (October 3) he bonded out on his own recognizance and by the end of the day the authorities decided not to file any charges against him. On or about October 12, DIA held a formal hearing to review the Grievant's violation. The Grievant said he told DIA and Southwest personnel at the hearing that the criminal charge had been dismissed. DIA asked for written documentation of this dismissal and the Grievant provided it to DIA on or about October 14.

Also on October 12, the Company granted the Grievant's request for a Personal Leave of Absence from October 13 through October 22 to obtain a current and valid SIDA. The Company memo memorializing this leave also stated that at the end of the leave the Grievant would have to provide proof of a current and valid SIDA badge in order to remain a Company employee.

On October 14, the Grievant testified that he told the Company he had provided the documentation requested by DIA regarding the dismissal of charges to DIA. He said that at the

direction of a Company manager he was sent to the Company's People Department to be fingerprinted which is a requirement to get his SIDA badge back.

Apparently by Monday, October 17, DIA verified the court documents given to it by the Grievant. At this time, it appears that the last thing that needed to be done was to get the fingerprints and background check from the Company to DIA so that the Grievant's SIDA badge could be considered and the Grievant reinstated for said badge. On the same day, the Grievant said he was informed by a DIA badging official that DIA had not received any paperwork from yet from Southwest Airlines.

On Sunday, October 23 the Company scheduled a meeting with the Grievant along with Union representation. The Grievant was given a memo indicating that in light of the fact-finding meeting of October 12 the Company had decided to terminate the Grievant because he brought a loaded firearm into DIA on October 2 and because his SIDA badge was revoked at the same time. Since it is a requirement that all station employees have a SIDA badge displayed at all times, the Grievant could not work his job. (There was also mention in the memo that because of the number of absences the Grievant incurred prior to his leave and because his time off after the incident and his personal leave, he had exceeded the number of chargeable offenses to keep his job. However, the Company has acknowledged that this was a mistake.)

In reviewing the evidence as presented, it appears to me that through at least October 14 the Company had not made a decision to terminate the Grievant – otherwise there was no reason for it to go forward with the fingerprinting in Denver that begins the background check required by DIA for badging on October 14th. Likewise, there was no evidence presented that DIA would not go forward with the re-badging process once it received the background paperwork. In fact, sometime after the Grievant's discharge (on or about November 22) DIA indicated by e-mail to the Grievant he was eligible to reapply for a new SIDA if he brought two forms of ID and the fingerprint certification to their office.

This indicates to me is that the Company never forwarded any fingerprint information and/or a background check to DIA (or to the Grievant for that matter) to complete the process before the end of his leave. Arbitrator Marvin Hill noted in his Award in the [REDACTED] termination arbitration between the same two parties in 2015:

“At the same time a blanket determination by Management that an employee is to be dismissed in all cases where he or she loses a SIDA badge is inconsistent with a just cause provision in a

collective bargaining agreement. An employee may lose his SIDA badge for numerous reasons other than misconduct, such as the case where an employee fails to renew his badge. While the employee cannot work without the badge, presumptively a summary dismissal would not pass muster under a just cause criterion. Each case must be examined on its own merits. The underlying cause as to why the employee lost his badge matters.”

I cannot say with any certainty whether or not the Grievant would have gotten his SIDA badge had the Company followed through with the process (or even allowed him more time), but I can say there is no way he could get a SIDA badge without the Company submitting the fingerprint certification and background check and letting the process move forward. Therefore, to say his lack of a SIDA badge was another reason for his termination cannot be just cause to terminate Grievant because it was the Company’s apparent lack of follow-through (and/or patience by calling for a final meeting to discharge the Grievant on a Sunday) that frustrated any chances the Grievant had to regain his SIDA badge.

Since the Grievant’s attendance record and his lack of SIDA credentials have been eliminated as reasons to terminate him, the only remaining charge is that the Grievant brought a loaded gun into the Denver International Airport. The facts of the case show that the Grievant drove his car with his pistol in his backpack to an all-purpose employee parking lot some two miles from his place of work. He gave his backpack to security at the exit of the lot before boarding a bus that would take him (and presumably others) to where he worked. The security officer saw the gun and the events unfolded as noted herein.

Obviously, he did not take his gun into the Denver airport facility (building). However, he did have his pistol in his backpack which he taking to his work site (a sterile area) because he had put his uniform in his backpack to change into before commencing his shift. His excuse for what happened is that he made a mistake – he forgot to take it out of his backpack and leave it in his car. He gave evidence that his intent was to place it in his glove compartment. The Grievant testified that immediately after he saw the security officer look in the bag and then look at him he realized that he had forgotten to take the pistol out of his backpack.

I find the Grievant to be credible in his account of what happened and how it happened. On the other hand, the Company has argued that intent has nothing to do with this particular offense and points to other cases where it has terminated employees who have indicated that the

firearms they carried to security were unintentional and/or mistakes (mainly forgetfulness) on their parts.

As for these other Company cases, it appears that the employees actually carried their firearms to TSA security inside the airport facility itself. When the firearms were discovered, the guns were confiscated, the employees were arrested and their SIDA badges were taken. However, in the Orlando Airport cases (██████████ cited above is one of these) cited by the Company, there seems to more weight given to the fact that the Orlando Airport officials indicated they would not issue the Grievants/employees SIDA badges under any circumstances than the actual violation of bringing firearms into the airport. In fact Arbitrator Hill noted in that same case:

“The problem for the Grievant is this evidence record indicates he will not be getting a SIDA badge for MCO by the Greater Orlando Aviation Authority (GOAA) ever again.”

However, in this case, the Denver Airport authorities were willing to go forward with the notion the Grievant could reapply for his SIDA badge once he supplied them with the documentation that the police and prosecuting attorney were dropping the charges against him and the Company provided the Grievant's fingerprints. In fact, thereafter on October 14th the Company had the Grievant fingerprinted at its facility to begin the process for the Grievant to reapply for his SIDA badge.

I am not discounting the seriousness of the Grievant's actions. Even without intent, it was a very careless act. Nevertheless, the Company appeared to consider the possibility of taking the Grievant back once he got his SIDA badge back - otherwise why would the Company let him be fingerprinted to begin the process of reapplying? I raise this question because it seems antithetical to the Company's stated policy of automatic termination for such an offense.

As to the policy itself, it is reasonable as written – but it does say:

“Violation of the foregoing policy will be grounds for disciplinary action up to and including termination.”

However, this is not tantamount to automatic termination for such an offense.

The question now becomes whether or not the discipline imposed is reasonable and/or arbitrary under the circumstances. The Company carries that burden of proof. I believe its policy of terminating all employees who bring firearms into or up to a secure or sterile or

otherwise recognizable vulnerable area is not without merit and may be considered reasonable under many circumstances.

In this case though, it seems unreasonable, arbitrary and excessive. It was a decision seemingly made without full consideration of the all the relevant facts and a mechanical response to a specific type of violation. The Grievant has nothing on his record to indicate any violent tendencies or that he is anything but a decent employee. The area where the gun was discovered was some two miles from the terminal and the area where he works. He realized his mistake almost immediately and tried to convince the security officer to let him take the pistol back to his car. The charges were dropped and the Denver Airport authorities were open to his reapplication for security clearance once this was done. And, finally the Company fingerprinted him and began the process of his reapplication before terminating him some nine (9) days later.

Therefore, I will sustain the grievance as to the discharge. As to the remedy, the Grievant is to receive back pay, less interim earnings, from the date of his termination, October 23rd through the date of this Award – March 30th. If he still wants his job back, he will begin his reapplication for his SIDA badge immediately and the Company will cooperate fully at its end to aid in this reapplication. If the Grievant receives his SIDA badge, his termination will be converted to an unpaid suspension (the time from March 30th until he receives the SIDA badge) and he will be returned to work at the next available shift after receiving said badge with no other loss in benefits and with full seniority. If he does not receive his SIDA badge from the Denver International Airport authorities or does not want his job back, he will not be returned to work but is entitled to keep the back pay award herein.

VI. AWARD

Based upon the foregoing, the Company did not have just cause to terminate the Grievant and thus the grievance is sustained. The remedy, as noted above, is awarded to the Grievant.

Date: March 30, 2017



Thomas A. Cipolla, Arbitrator