BEFORE

DR. A. DALE ALLEN, JR.

IMPARTIAL ARBITRATOR

In the Matter of Arbitration between:	)
	)
Southwest Airlines Company	)Time Frames Grievance of
Dallas, Texas	)[redacted]
	)
	)
and	)
	)
	)
Local 555	)
Transport Workers Union	)

OPINION AND AWARD OF THE ARBITRATOR

May 26, 2000

ARBITRATION AWARD

In the Matter of:

Local 555
Transport Workers Union

and

Southwest Airlines Company
Dallas, Texas

FOR THE UNION:	Charles Cerf Vice President
FOR THE COMPANY:	Beverly Carmichael Chief Counsel
IMPARTIAL ARBITRATOR:	Dr. A. Dale Allen, Jr. Hankamer School of Business Baylor University—Box 8006 Waco, Texas 76798-8006

By the terms of the agreement between Southwest Airlines Company, hereinafter referred to as the "Company," and TWU Local 555, hereinafter referred to as the "Union," Dr. A. Dale Allen, Jr., Baylor University, Waco, Texas, was selected by the parties to serve as impartial arbitrator. A hearing was held at the Love Field Holiday Inn in Dallas, Texas, on March 3, 2000. Full opportunity was afforded the parties for the introduction of evidence, examination and cross-examination of witnesses, and oral arguments. Upon receipt of post-hearing briefs from both parties, these proceedings were declared closed on April 14, 2000.

ISSUE

Did the Company violate the Collective Bargaining Agreement when, following the fact-finding meeting, Company informed Grievant [redacted] that he was guilty of misconduct, but the Company was deferring the actual disciplinary action until Grievant returned to work from an on-the-job injury (OJI) leave? If so, what is the appropriate remedy?

STATEMENT OF GRIEVANCE

"Company violated time frames set forth in Art. 20, Sec. E. Remove letter issued on 8-31-99 and close matter."

PROVISIONS OF THE LABOR AGREEMENT

Article 20 – Grievance/System Board/Arbitration

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

E. Time Frames. It is expressly understood and agreed that if any of the time frames set forth in this Article are violated by the Company, the Employee shall be awarded the desired settlement without precedent. Furthermore, if the time frames set forth are violated by the Association, the grievance shall be considered withdrawn. Determination of time frame violation issues shall take precedence over consideration of any other issue, and, if upheld, no further determination shall be appropriate. . . .

G.1.c. The Company shall render its decision, in writing, within five (5) working days after completion of the fact finding, and copies of the decision shall be delivered to the Employee and the local representative of the Association."

POSITION OF THE UNION

The Union commences by noting that on August 6, 1999, the Company sent a letter to Grievant [redacted] informing him of a fact-finding meeting scheduled for August 10, 1999. Because he had changed addresses, Benson did not receive the letter. Union Steward Scott Armstrong offered the Company an extension for fact-finding (hereafter "ff") to be held after [redacted]'s return from OJI. The Company replied that no extension was necessary—it could be held upon his return.

On August 23, 1999, [redacted] and Armstrong approached Ramp Manager Joe Lasiter and informed him they would be willing to attend a ff meeting prior to [redacted]'s return from OJI. Hence, a ff session was scheduled for the next day, August 24. Neither party asked for or granted an extension of the time frames. On August 30, 1999, the Company gave [redacted] a letter dated August 28 presenting results of the ff. Therein was stated that management had determined that "you are in fact in violation of the Southwest Airlines Check Cashing Policy. However, due to your current inactive status on OJI leave, the final resolution and any appropriate discipline will be deferred until your return to active status. A meeting will be scheduled at the earliest possible time following your return to work." To this point, the Company had met all time frame requirements. Armstrong asked at the August 31 meeting if management was requesting an extension. The response was that no extension was necessary; they were deferring discipline until [redacted] returned from OJI.

On September 1, 1999, [redacted] filed his grievance claiming the Company was in violation of time frames. Grievant was released to return to work from OJI on September 8. The next day, the Company notified [redacted] that a meeting was scheduled for September 13 to discuss any appropriate discipline and to discuss a final resolution from the ff meeting of August 24. No additional fact-finding took place during the September 13,1999, session. Instead, Ramp Manager Lasiter merely gave [redacted] a termination letter based on the results of the August 24, 1999, ff meeting. September 13 was 21 days (14 working days) after the August 24 ff meeting.

Article 20E states that if the Company violates the time frames set forth in the Article, the Employee shall be awarded the desired settlement. Paragraph G1c of that same Article indicates that the "Company shall render its decision, in writing, within five (5) working days after completion of the fact finding . . ." At the August 31 "results" meeting, the Company indicated that [redacted] was found guilty of the charges, but "appropriate discipline" was to be deferred until [redacted] returned from OJI. Consequently, the Company's final and complete "decision" was not rendered until September 13, some 14 working days following the ff session of August 24. Clearly, this was well beyond the five-day limit specified by the CBA. Moreover, the Company never asked for an extension of the time limits, which is something the parties have done in the past. Indeed, the Company expressly stated that it did not need an extension of time.

It is the Union's position that the term "decision" in Article 20, G1c, means the complete results, including any discipline to be imposed. There is no

indication anywhere in the CBA that discipline can be deferred, nor has that been the practice. The Company relies upon the [redacted] case as a precedent for what it did to [redacted]. However, the circumstances in the [redacted] case were quite different. [redacted] left his ff meeting before it was completed. Thereafter, he was confined to a clinic in a rehabilitation program and could not be reached. Thus, based upon all of the foregoing, the Union contends that [redacted]'s grievance should be upheld. He should be reinstated and be "made whole" in every manner.

POSITION OF THE COMPANY

The Company contends that it did not violate the time limits of the CBA when it notified [redacted] on August 31, 1999, that he had been found guilty of misconduct, and that the actual discipline would be deferred until he returned to work from his OJI leave. Since the time frames were met, no extension of time was needed. However, if a time extension had been needed, the Union made clear that the extension would have been granted. Moreover, the Company's decision to defer the actual discipline in no way prejudiced the Grievant. In fact, the decision to defer was completely to the Grievant's benefit and best interests.

The Grievant had reached the termination stage under the Company's check cashing policy, because he had written several "hot checks." The August 10 ff meeting had to be cancelled because the Grievant had not notified the Company of his change of address. In connection with that situation, Union official Armstrong provided Ramp Manager Lasiter with a letter indicating that the

parties recognized that no extension of time frames was necessary, and that the fact finding could be scheduled upon [redacted]'s return from his OJI leave. Consequently, the Company never considered that the issue of "time frame" would ever emerge from this situation with [redacted].

At request of [redacted] and the Union, the Company agreed to schedule the August 24 ff session even though the Grievant was still on OJI. [redacted] was provided a full and complete opportunity to present his position at that meeting. On August 31(within the five-day time limit), the Company issued its "decision" that [redacted] was guilty of misconduct, and that discipline would be deferred until he returned from OJI. That "decision" fulfilled the requirements of Article 20, G1c. Shortly following [redacted]'s return to work, he was terminated on September 13.

Basically, the Union is arguing that the decision rendered by the Company was "incomplete" because no discipline was assessed. There is nothing in the language of the CBA that states that the determination of guilt and the assessment of the appropriate discipline must occur simultaneously. Indeed, that would be the normal practice, but there are sometimes circumstances which prevent that from happening. For example, in the [redacted] case, his ff meeting was held more than a month before the termination action was imposed. During the interim, [redacted] was in a drug rehabilitation clinic. It was in [redacted]'s best interests not to terminate him until he completed his rehabilitation. The Union did not raise any time frame grievance in the case of [redacted]. It is nearly an identical situation with [redacted].

As noted above, sometimes there are special circumstances that require separating the Company's assessment of guilt from that of imposing the actual discipline. In [redacted]'s case, he had been a litigious employee in the past. Chapter 451 of the Texas Labor Code prohibits employers from discriminating against an employee because the employee has filed a Worker's Compensation claim. Had The Company terminated him while he was on OJI, that action could have provided an avenue for [redacted] to contend that his termination was in retaliation for going on a Worker's Compensation leave. Moreover, it was in [redacted]'s best interest to delay the termination action. Had he been discharged on August 31, he would have lost the remainder of his OJI leave earnings—he received full pay from the Company while he was on OJI. The fact that he was being terminated for passing "hot checks" is a clear indication that he needed his OJI leave earnings.

In summary, the Union admitted that it had offered to allow the Company an extension of time frames early in the process, and would have been willing to do it again in late August 1999. The Company contends that, in fact, it did issue a complete "decision" on August 31 in compliance with the CBA time limits. Had there been any question about that, indeed, the Company would have sought and been granted an extension. The Union indicated no "urgency" in the handling of [redacted]'s case. All along, there had been mutual acknowledgement that it was unnecessary to proceed with this matter until Benson returned from his OJI leave. Thus, there is no basis for contending that the Company should be subject to a "forfeiture" or "default" on the facts of this case. (See Masolite

Concrete Products, 103 LA 10; AVCO Corporation, 65 LA 1195; and Kent County, MI, Dept. of Public Health, 75 LA 948). Consequently, this grievance should be rejected.

OPINION OF THE ARBITRATOR

Grievant [redacted] interests were well defended by his Union in this dispute. Nevertheless, the undersigned must basically agree with the Company's position herein. Language of the parties' CBA, the parties' discussions regarding an extension on the time frames, and the unusual circumstances surrounding this case all favor a decision for the Company.

Let us initially consider the language of Article 20, G.1.c. The key wording in that provision states that the "Company shall render its decision, in writing, within five (5) working days after completion of the fact-finding." Getting to the heart of the matter, the Union's basic contention is that the Company did not issue a full and complete "decision" in the August 31 meeting. That is, the "decision" was "split" into two parts, with the final half coming 14 working days after the first half was rendered. Thus says the Union, the five-day time limit for issuing the "decision" after completion of the fact-finding was violated.

The undersigned must respectfully disagree with the Union's contention. To begin with, the contract does not describe what the "decision" must consist of—the term "decision" is not defined. It is this neutral's conclusion that the Company, in fact, did issue a "decision" on August 31 when it stated that "we (Company) have determined that you are in fact in violation of the Southwest

Check Cashing Policy." That was the most important and critical "decision"—that [redacted] was guilty. In a sense, the follow-up action of termination, which came 14 working days later, was a "residual" element—had [redacted] been found "not guilty" there would have been no termination action. No doubt, the Company had already determined to discharge [redacted] back on August 31, but for justifiable reasons to be examined below, management decided to withhold issuance of the penalty until [redacted] returned from his OJI leave.

The "bottom line" on this particular aspect of the case is that the term "decision" is not defined in the CBA language. Certainly, the parties could negotiate such a definition. Until that may be done, one must consider each case on its own merits. A major "decision" was rendered by the Company on August 31—[redacted] was guilty of the charges involving check cashing. Because of the unusual circumstances surrounding this case, 14 working days later, a follow-up action was taken when [redacted] was terminated. There is no debate that the finding of guilt and the associated penalty would usually be assessed simultaneously. However, if the circumstances reasonably dictate that they should be separated, then there is nothing in the term "decision" which prevents their separation. Indeed, because of the unusual circumstances involved in the [redacted] case, that is exactly what happened. The Union's argument regarding its interpretation of Article 20, paragraph G.1.c., is interesting, but for the sake of "reasonableness," in this particular case it must be rejected.

What are the unusual and abnormal aspects of this dispute which dictate that it was "reasonable" for management to delay imposition of the disciplinary

action for 14 working days? The most important one is that [redacted] was on OJI leave. As pointed out by the Company, provisions of the Texas Labor Code prohibit employers from discriminating against workers who file Worker's Compensation claims. Had the Company terminated [redacted] while he was on OJI, it could have been perceived as a retaliatory action by the Company. This could be true in any case, whether or not the particular employee had a "litigious bent." Secondarily, had [redacted] been fired while on OJI, his payments from the Company would have ceased. Hence, whatever the Company's motive may have been, the fact is that [redacted] benefited from the delay in imposing the discharge action. Certainly, no harm or prejudice fell upon [redacted] as a result of this delay. In short, the unusual circumstances surrounding this particular case rendered it "reasonable" for the Company to delay imposition of the disciplinary action.

There was much argument in the arbitration hearing regarding the subject of "extensions." The findings *supra* dictate the resolution of this case. However, if it had been important, the undersigned would have concluded (and did) that the Company had a right to assume that a formal extension was not required, because throughout the process the Union kept indicating its willingness to wait until [redacted] returned from OJI to handle the matter. The Union expressed no urgency to get it done before then. Most assuredly, had the Company had any notion that the Union was going to raise a "time frames" issue such as has emerged herein, management would have asked for and been granted the necessary extensions—the Union does not contest that fact. Hence, based

upon all of the foregoing factors, the undersigned has determined that the grievance must be rejected.

AWARD

The grievance is denied. The Company did not violate the Collective Bargaining Agreement in this case. Per language of Article 20, paragraph C, the Union is directed to pay 100% of the cost of arbitration. Any unresolved differences regarding interpretation or implementation of this Award will be settled by the undersigned upon written request of the parties.

A. Dale Allen Jr.

Dr. A. Dale Allen, Jr.
Impartial Arbitrator

May 26, 2000