
IN THE MATTER OF ARBITRATION

OPINION AND AWARD

between

SOUTHWEST AIRLINES

**Case No. MCO-12-1110/12
(Termination of [REDACTED])**

and

TWU LOCAL 555

Gil Vernon, Arbitrator

APPEARANCES:

On Behalf of the Employer: Michelle Morgan, Attorney –
General Counsel Department, Southwest Airlines

On Behalf of the Union: Brian Smith, Grievance Specialist –
TWU Local 555

I. ISSUE

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

“Did the Company have just cause to discharge the Grievant and, if not, what shall be
the remedy?”

II. BACKGROUND AND FACTS

The grievance was filed to protest the issuance of the following letter:

TO: [REDACTED]/Employee #75656
FROM: John Brophy/MCO Manager of Ramp & Operations

DATE: June 20, 2012
SUBJ: Results of Fact Finding – Termination

On March 15, 2012 a Fact-Finding meeting was held to discuss your leaving work without permission on March 7, 2012. Present at this meeting were you, Union Representative [REDACTED], MCO Ramp Supervisor Francisco Vargas and myself.

After a thorough and complete investigation into this matter, and after considering the evidence and testimony presented at the Fact-Finding, it has been determined that you left work without permission on March 7, 2012, which was in violation of the Southwest Airlines Ground Operations Basic Principles of Conduct, including, but not limited to, the following:

6. Unauthorized absence or leaving work without permission.
7. Dependability and punctuality are necessary. You are expected to be in, or at your position and ready to work when you are scheduled.
13. Act of theft or dishonesty, including knowingly presenting the Company falsified documents.
14. Performing your job in a careless, negligent, or unsatisfactory manner.

[REDACTED] in addition you were reinstated at a Final Letter of Warning with 93 day suspension for attitude on July 27, 2011 and July 29, 2011.

As a result of your actions, your employment with Southwest Airlines is terminated effective immediately.

The matter couldn't be resolved and was ultimately appealed to arbitration. A hearing was held September 20, 2012. Following receipt of the transcript, post-hearing briefs were received November 30, 2012.

III. DISCUSSION AND OPINION

The first question in most just cases is whether the Grievant, as a matter of fact, violated some work rule or other valid employment condition. In this case,

the Company contends Grievant left the work site without permission of his supervisor.

The Company's case rests on the testimony of two supervisors. Grievant's direct supervisor on the ramp on the day in question was Orson Copeland. Mr. Copeland plainly testified he did not give Grievant permission to leave. Nor did Grievant request it. Copeland's first clue Grievant had left was inspired by a call from Ramp Manager John Brophy to Copeland. Brophy had called him to secure his assistance in locating Grievant. Copeland called Grievant on the radio and looked for Grievant in the break room but did not find him. He ultimately checked the time records and saw Grievant had clocked out at 12:16 (some 2 hours and 14 minutes prior to the end of his shift).

Mr. Brophy testified Grievant had a fact-finding meeting scheduled that day around 1:00 p.m. and came to his office shortly after noon to request a postponement which Brophy agreed to. Brophy told Grievant he would type up the extension agreement/document and that Grievant should come back later to sign it. It was this task that caused him to call Copeland to locate Grievant (to come back to his office to sign the extension paperwork). He too said he did not give Grievant permission to leave.

Grievant described a detailed conversation with Copeland in which he asked if Copeland wanted him to move some freight that didn't belong on the ramp.

After Copeland radioed the freight house to have them pick it up, Grievant said he asked Copeland if he could go home early (LWOP is the an acronym for this generally accepted procedure) since he worked his last flight. Copeland, according to Grievant, shook his head and said “okay”. He then went to Brophy’s office to seek the postponement of the fact-finding (as his Union representative had called in absent that day). Grievant also claims he told Brophy he was getting ready to leave and would be off for the next two days. Brophy told him that he would reschedule the fact-finding meeting and that he would get back to him with a letter after he talked to the Union representative about a date. Grievant testified he then left Brophy’s office to the close-by radio room and exchanged his radio for his badge (with another supervisor) and left.

Grievant was asked during the hearing if he thought Copeland was lying. He did not think so as he believed Copeland was a good supervisor with whom he worked well together. Instead, Grievant asserts it was nothing more than a miscommunication with all the noise and radio chatter in the area.

The Parties’ arguments track with their witnesses’ testimony. The Company contends its evidence establishes a violation of the work rule that requires an employee to have permission to leave work. This rule violation coupled with Grievant’s very poor discipline record establishes just cause for termination. The Union claims Grievant’s version makes sense. He asked his supervisor if he could

take leave-without-pay (LWOP), went to Brophy's office to take care of Union business and then turned in his radio. The Grievant is credible and misconduct was not established. Moreover, the Union directs attention to evidence that shows that the Company does not terminate employees for the first offense of leaving without pay.

It is the opinion of the Arbitrator that when considered together the testimony of Copeland and Brophy—relative to Grievant's less credible testimony—establishes that Grievant left work without permission. Accordingly, misconduct occurred for which discipline was appropriate.

Copeland had no reason to lie. Even by Grievant's account they had a decent relationship. Of course, it is 'possible' he didn't hear Grievant's question as to whether he could "LWOP". However, Grievant's testimony that he asked for permission is not credible when viewed in light of Brophy's testimony. Grievant claimed he also told Brophy he was leaving. Not only did Brophy disagree this was said, Brophy's actions are inconsistent with a man who was told Grievant was leaving. His impression was clearly that Grievant was still at work because that is the very reason he called Copeland. He wanted to find Grievant to give him the letter that confirmed the time limit extension for the fact-finding meeting. This is something that could have been done without consulting with the absent Union representative.

The significance of the fact Brophy was looking for Grievant is obvious. If Grievant had truly told him he was leaving, Brophy wouldn't have made efforts including calling Copeland to locate Grievant. Further, the significance of Brophy's actions and testimony is that it makes it more likely Grievant is also not telling the truth about his conversation with Copeland. Copeland's belief he did not give Grievant permission to LWOP is reinforced by the fact he went looking for Grievant upon Brophy's request.

Given that rule violation was established, the next question is whether the penalty was just under all the relevant circumstances. Foremost among the relevant circumstances is the Grievant's rather poor and tenuous past record. Several of his prior record notations suggest Grievant was not receptive to counseling which in turn suggests he would not be receptive to additional corrective efforts. The Union's evidence, which shows discharge was not typically issued for a first offense of this type, doesn't account for Grievant's record. The Union's evidence would be entitled to more weight if its examples showed other employees in the Grievant's same circumstances. Grievant distinguished himself by being on a final warning. Having marched himself to the edge of the cliff he should have realized another misstep would, as he was warned, result in discharge. Given his record, termination was for just cause.

AWARD

The grievance is denied.

(Signature on Original)

Gil Vernon
Arbitrator

Dated this 2nd day of January 2013.