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IN THE MATTER OF ARBITRATION **OPINION AND AWARD**

between

SOUTHWEST AIRLINES **[redacted]-OAK-P-0822/13 and [redacted] OAK-P-0823/13**

and

TWU LOCAL 555 **Gil Vernon, Arbitrator**

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APPEARANCES:

On Behalf of the Company: Christina Bennett, Senior Attorney - SWA

On Behalf of the Union: Brian Smith, Grievance Specialist – Local 555 (At Hearing) and Tennyson Berry Jr., District VII Representative, Local 555 (On Brief)

I. BACKGROND

The issue before the Arbitrator is whether separate grievances filed on behalf of Grievants [redacted] and [redacted] dated April 27, 2013 in connection with a cancelled temporary assignment in Nashville (BNA) were filed on a timely basis. The Parties' labor agreement requires (in Article Twenty L. 11.) that "time frame" issues must be heard and decided on prior to a decision on the merits.

In such a contractual framework, the merits merely set the context for the time frame issue. Thus, any discussion of the underlying grievance is merely background and is not intended to be any express or implied reflection on the merits of the matter now under evaluation strictly on procedural grounds.

From time to time, there are stations on the SWA system that have, for a variety of reasons, manpower shortages. The Parties have provided for a system in Article Sixteen by which employees from other stations (who can spare personnel) can request to fill these temporary assignments. On a practical level, these temporary assignments can provide extra earnings opportunities for employees. In any one case of a temporary vacancy, employees from more than one station may express interest.

In March of 2013 the Company needed employees in BNA. Grievants expressed interest in the temporary assignment and were awarded the assignment March 25. Before they could go to BNA they had to go through the local badging process in order to obtain SIDA access. This is strictly a local matter handled at the Nashville airport.

There was some delay, the cause of which is not relevant, in the badging process. Then on Friday April 5, 2013 Grievants' Manager, Matt Sampson, along with copies to Joe Mendez, Bob Watkins, Billy Wix, Jim Mortus and Frank

Guistian (all Company personnel) received an email from Vance Foster, Manager of Employee Resources. It read:

> "The OAK temp assignments that were slated for BNA have been canceled. Please inform the two Agents that were awarded said assignments. As always, I am available for any questions and/or concerns."

Sampson did not give a copy to the Grievants or anyone else in the Union. It is not unimportant to note both Grievants at the time were elected Union representatives at OAK (although [redacted] was an alternate).

There is no dispute that Sampson verbally told Grievants that their temporary assignments had been cancelled. There is a dispute as to when he told them. Sampson testified he received the above-noted email at 12:50 p.m. on April 5, 2013, and he notified the Grievants to come see him. They came to his office together at 1:15 p.m. that day and he told them "well, they cancelled the Oakland portion of the assignments". He was "positive" it was April 5. He also recalled [redacted] asked him why the assignment was cancelled and he did not know except he may have said that some of the BNA may have "came off a leave and didn't need the portion of our guys anymore". (See transcript or TR page 26-27).

[redacted] testified he found out about the cancelled assignment on April 15 during a phone call initiated by [redacted] He asked him why and [redacted] said he had asked Mr. Sampson why and that Matt said he didn't know. The next

day [redacted] was at work and upon inquiry Sampson said he didn't have answers as to why the assignment was cancelled but suggested that he [redacted] could ask Regional Director Jim Mortus (who was coming to OAK on March 18). [redacted] did talk to Mortus and according to the former's testimony:

> "Well, Jim basically told me, he said, '[redacted] I didn't know that you was one of the guys wanting to go. There will be other temp assignments, and apparently what happened is the guys in Nashville were returning from leaves so there was no need."

Recognizing that the Company could cancel an entire temporary assignment and evidently assuming that was the case, [redacted] said he "left it alone".

[redacted] testified that while he had a conversation with Mr. Sampson on April 5 about the temporary assignment, Sampson merely told him he had talked to Bill Wix in BNA about the badging delay and that there was no news. As corroboration [redacted] produced a screen-shot of a text message sent to [redacted] that same date which effectively said the same thing. ("Matt said he talked yesterday with Billy but he said nothing yet".)

[redacted] further testified he learned of the cancellation when Sampson whispered him the news in the break room on April 15. He asked Sampson "why or who told him that" but Sampson said he didn't have any information. [redacted] relayed this information to [redacted] He knew [redacted] had talked to Sampson and Mortus.

Then on April 22, [redacted] talked to Tennyson Berry about the BNA situation. At the time, Mr. Berry, like [redacted] was officially an alternative Union Representative. However, Mr. Berry had recently been elected District Representative and was to take office on May 1, 2013. [redacted] told Berry that:

> ". . . and I told him that I just didn't feel right or I didn't think that we had gotten a, you know, clear explanation, there was no clarity basically, you know, what happened. The Company does have the right to cancel, but something just didn't sit right with me. I didn't know what it was so that was, you know, me trying to investigate and find out, you know, exactly what was going on."

He and Berry then went to see Matt Sampson that same day (Saturday April 22, 2013).

[redacted] estimony tracked Mr. Berry's as to their conversation with Sampson. Berry asked Sampson about the cancellation. Just as Sampson had told Grievants, he told Berry he didn't have any information. Mr. Berry inquired "well, who could I talk to that has information?" Sampson suggested he talk to Bob Watkins. Berry, not being completely familiar with Watkins, got his phone number from Sampson.

When Berry called Watkins and asked what had happened with the BNA temporary assignments (vacancies) Watkins told him they had been filled. Berry inquired further. His testimony was as follows:

> "And he said, 'well, it's been filled'. And I said, 'well, could you tell me how the process worked?' He said him and three directors get together and they determined who goes to Nashville. I said, 'well, why didn't Oakland have the opportunity?' He said they decided to choose somebody from other stations. And I said, 'well, these guys, they

> senior, why didn't they be—why didn't they have a choice?' And, you know, according to Article 16 it says if you have more than one station that participate and you have a overflow of employees then you take the senior guys. So I said to him, I said, 'well, Bob, so why didn't you take these guys?' And he said, 'well, we never done it in the past like that'."

On April 29, the grievances now before the Arbitrator were filed on the basis that employees junior to Grievants were assigned to BNA in violation of Article Sixteen. The grievances were denied on the basis (according to the Company) that they were filed outside the ten-day time frame set forth in Article Twenty.

II. ISSUE

The Parties agreed the issue before the Arbitrator is:

> "Did the Union violate the time frames set forth in Article 20? If so, what is the appropriate remedy?"

III. OPINION AND DISCUSSION

The Parties' positions while detailed, extensive and well presented, can be succinctly stated. The Company contends the time limit clock started (tolled) April 5 when Sampson told Grievants that the OAK portion of the BNA temporary transfers were cancelled. The grievance, because it wasn't filed until April 29, was grossly outside the time frame.

To rule otherwise, the Company says, would mean the Union could postpone filing grievances indefinitely and in this case the only reason that the information

that other employees were temporarily assigned in BNA wasn't shared with the Grievants is they never asked for it.

The Union contends that the time limit clock started April 22 when it became aware of the violation and that they were prevented from knowing the circumstances giving rise to the grievance before that. Consequently, the grievance was filed within ten days of April 22 and is timely. In short, they argue that without knowing if there was a contractual violation, an agent cannot be expected to file a grievance.

The Arbitrator observes that Article Twenty is a multi-purpose contract clause. It sets forth time limits for filing grievances (most commonly done by the Union) and for investigating disciplinary matters by Management. Article Twenty Section One L. 1. (Step 1/Department/Assistant Manager) addresses contract grievances. It states:

> "1. Step 1/Department/Assistant Manager ("Manager") If an Employee is unable to resolve his grievance through his supervisor, within ten (10) calendar days of the occurrence of the circumstances in question, the grievance shall be summarized in writing and presented to the manager of his designee. At any meeting to discuss same, the Employee may be accompanied by his local representative. The manager or his designee shall issue a written decision upholding or denying the grievance within five (5) working days." (Emphasis added)

Article Twenty Section One G. (Fact-Finding Procedures) 1. A. sets forth a time limit for the Company proceeding with a disciplinary investigation or in the parlance of this contract a "fact finding". It states:

> "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 fact finding, 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 fact finding not later than ten (10) calendar days from the time the Company becomes aware of the incident concerning which the fact finding shall be convened."

The Company argues these different clauses establish distinct time standards as to the starting time clock for grievances (the date of the "occurrence") and the date that Management becomes "aware" of the subject of the fact finding.

While this distinction may or may not exist, the contract language concerning the extension of these time frames is clearly unified under Article 20 Section One F. which states:

> "F. Extension of Time Frames. It is understood and agreed that, any any step of the fact finding or grievance procedure, the time limits set forth may be extended by mutual agreement between the Company and the Union, in writing. Further, in the event either party, due to circumstances beyond the reasonable control of such party, does not become aware of, or is prevented from disclosing, facts or circumstances which would give rise to either a fact finding or a grievance, the time frame for pursuing such fact finding and/or grievance shall be extended as appropriate. If an Employee makes himself unavailable (other than on his regularly scheduled days off) to work his full shift on his last scheduled workday within the time frames under the fact finding procedures and paragraph H of this article, the Company may issue the notice/letter to the Employee upon his first full day returned to work."

In this case, there was no written agreement to extend any time limit and the key to this case is the exception language that is underlined above.

It is certainly true that Mr. Sampson or Mr. Mortus never shared with the Grievants that junior employees were utilized for temporary BNA assignment. On

the other hand, two other things are apparent. First, there is no convincing evidence Sampson or Mortus knew junior employees were used. Thus, they can't be accused of "hiding the ball". Second, and more importantly, it is equally true neither of the Grievants asked if junior employees were utilized.

It is clear by contrast that Mr. Berry did ask the probing questions that did ultimately reveal that junior employees were used. The Arbitrator believes these questions to be relatively obvious. After all Sampson testified he told the Grievants in effect that it was a partial cancellation. At least he communicated enough to inspire more questions of the Grievants, even if their conversation about the cancellation occurred on April 15 rather than April 5.

To put it plainly, the Arbitrator cannot understand why the Grievants couldn't have and didn't ask the same questions Mr. Berry did on April 22. Both were Union Representatives, one of them of equal status/rank at the time to Mr. Berry. In particular, if they weren't getting any information from Sampson and Mortus, they could have asked, just as Mr. Berry did, who had the full story. If Grievants had been as diligent as Mr. Berry they could have discovered the underlying facts that gave rise to the grievance. The blame for the fact they did not lies at their own feet.

In the words of Article Twenty Section One F. the Arbitrator cannot find any circumstance beyond Grievant [redacted] and [redacted] reasonable control as to why

they were prevented--beyond their reasonable control or for other reasonable and appropriate reasons--from becoming aware of the essential facts and circumstances. They could have and should have become aware of those facts sometime in the ten days from either April 5 or 15. Even if their recollection is right that it was April 15 when they learned about the cancellation, no grievance was filed within ten days.

Neither Grievants nor the Company can avoid the tolling of time limits by a lack of simple diligence after a known event occurs. Under Article 20 the investigating party has some responsibility to do a basic examination of the circumstances surrounding discrete events such as the cancellation of the Grievants' temporary assignment to BNA. The Grievants did little to follow through. It may be an imperfect analogy but if one of the Grievants, i.e. [redacted] had an accident with a provisioning truck on April 5 and the Company failed to inquire how the accident happened such as asking him if he hit another truck and if so who was driving the other truck until April 29, it would be difficult to say the Company shouldn't have reasonably become aware of the other driver's possible culpability before April 15. Reasonable diligence is clearly implied in the language.

AWARD

The grievances were untimely and
it is dismissed.

(Signature on Original)

Gil Vernon
Arbitrator

Dated this 10th day of February, 2014.