BEFORE

WILLIAM H. LEMONS

IMPARTIAL ARBITRATOR

In the Matter of Arbitration between	)	
	)	
Southwest Airlines Company	)	
Dallas, Texas	)	**Case No. ONT-R-0363/14**
	)	
And	)	
	)	
Transport Workers Union of America,	)	**Staffing –** [redacted]
AFL – CIO Local 555,	)	
Representing Ramp, Operations,	)	
Provisioning and Freight Agent Employees	)	

OPINION AND AWARD OF THE ARBITRATOR

August 4, 2014

ARBITRATION AWARD

By the terms of the Collective Bargaining Agreement ("CBA") (Jt. Ex. 1) between Southwest Airlines, Co. (hereinafter referred to as the "Company") and the Transport Workers Union of America, AFL-CIO Local 555 (hereinafter referred to as the "Union"), William H. Lemons of San Antonio, Texas was selected by the parties to serve as Impartial Arbitrator, as per the parties' April 7, 2014 letter to him. A hearing was held in the Board Room at the Wyndham Dallas Love Field on June 5, 2014. The parties were afforded full opportunity for the introduction of evidence, examination and cross-examination of witnesses, and oral arguments. The Union tendered fourteen exhibits into evidence, including the decision by Dr. Allen in AAA Case No. 71-300-00267-96 (April 4, 1997) (the "Kansas City freight arbitration"). The Company introduced five exhibits into evidence. Additionally, the parties introduced three joint exhibits, including the CBA, the grievance package (Jt. Ex. 2), and later by stipulation, the Work Rules Interpretations ("WRI" – Jt. Ex. 3). The exhibits were received into evidence without the need for formal authentication or foundation, unless a particular document was the subject of a specific objection. There were objections about evidence of certain disputes from the past that had been settled on a "withdrawn without prejudice" or "non-precedent, non-referral" basis, which I address in this Award. The evidentiary portion of this matter was declared closed on June 5, 2014. Post-hearing briefs were received and cross-served on July 11, 2014.

APPEARANCES:

FOR THE COMPANY:

Kevin Minchey
Attorney
General Counsel Department

FOR THE UNION: Kevin Carney, District VI Representative
TWU Local 555

ISSUE: Did the Company violate the collective bargaining agreement ("CBA") when it assigned a Ramp Agent that was assisting the Freight Agents in the freight facility in Ontario to work in a different location on the ramp in Ontario?[1] If so, what is the appropriate remedy?

TIME FRAME ISSUES: There were no timeliness/time frame issues, so reference is made to the grievance package (Jt. Ex. 2) for applicable dates, the same being incorporated herein by reference as though fully set forth *verbatim*. The parties stipulated that this grievance was properly before me for final and binding decision.

PROVISIONS OF THE LABOR AGREEMENT: (Jt. Ex. 1)

Article 2 –Scope of Agreement

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 Five – Classifications

Section One
Ramp Agent/Provisioning Agent

The work of Ramp, and Provisioning Agents includes the functions which have been historically performed by such agents at Southwest Airlines stations and includes, but is not limited to, any or all of the following work covered under this specific labor contract. Agents required to perform such duties must be current and qualified within that classification.

[1] The parties were not able to agree on a joint issue, so presented their respective proposals for my consideration. I have accepted the Company's proposed issue (and slightly modified it) because it is more specific. This Arbitrator does realize that to "pull" the Ramp Agent from the Ontario freight facility means to take them out of the freight facility and put them back working on the ramp.

D. Warehouses, weighs, stacks, picks up, and delivers air cargo; checks air cargo handled against its accompanying forms to identify any mishandling or discrepancies; and corrects routine errors.

* * *

Article 20 – Grievance / System Board / Arbitration

Section One – Procedures

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

L. **Interpretation/Application of Agreement.** In the event of a grievance arising over the interpretation of, or application of, this Agreement, or in the event of disciplinary action other than discharge, the following steps shall apply. However, if the action involves discharge or a Union grievance concerning a change in Work Rules, it shall proceed to sub-paragraph 3, below. Decisions made pursuant to Steps 1 through 3, below, shall not constitute precedent of any kind unless agreed to, in writing, by the Union and the Company.

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

* * *

OTHER PERTINENT INFORMATION

CBA - SIDE LETTER OF AGREEMENT NUMBER FOUR

This will confirm the understanding reached during negotiations leading up to the agreement between the Company and the Union regarding the Work Rule Interpretations:

Upon ratification of this agreement, designees from both parties will meet to update the Work Rule Interpretations. Both parties agree that any difficulties arising from such update will be resolved by the undersigned or their designees.

(Jt. Ex. 1, Page 80)

TWU Work Rules Interpretations (Jt. Ex. 3, Page 6)

4. Are Ramp Agent assignments to include Freight Facilities and what are the job duties to include? (Section One)

Yes, where Southwest Airlines operates a separate Freight station, the Ramp Agents shall be assigned to assist in the Freight Facilities as outlined in Article Five, Section One, sub-paragraph D.

5. Will Ramp Agents be allowed to bid shifts at the Freight Facilities? (Section One and Article Six, Section One)

No, just as other job duties, the Ramp Agent duties will be assigned, such as, gate lead, transfer driver, T-point, etc. However, if the Freight Facility size and volume merits an Agent full time, it might be advantageous to allow a bid to take place, but only by local agreement in accordance with Article Six, Section One, paragraph L.

6. How many Ramp Agents will be placed in the Freight Facilities?

There will be no set number of Ramp Agents in any Freight station. The size and volume will determine the number of Employees that will be assigned. It is the intent of the Union and the Company to insure that Ramp Agent assignments shall include Freight Facilities.

DISCUSSION OF THE EVIDENCE

After the Kansas City freight arbitration was concluded and based upon Dr. Allen's decision, the Company placed Ramp Agents in the freight facilities at some stations, while it did not at other stations. Because Dr. Allen's decision did not have a "bright-line" or magic number that would trigger when a Ramp Agent might be placed in the freight facility, the matter became a management prerogative, subject to the Union's duties to police the CBA and raise the Ramp Agent staffing issue when appropriate. Apparently, some years ago, the Union did raise this issue at this station, and as a result the Company agreed at that time to add a Ramp Agent to the

warehouse to assist – "weighing, warehousing and stacking freight" – with duties described in Article 5 of the CBA.

The only "bright-line" measure that does appear in the CBA is that when the volume of freight at a station's freight facility exceeds 200,000 pounds total of inbound and outbound freight for a four consecutive month period (and adequate facilities are available), the Company shall establish and maintain s separate bid location for Freight Agent within the Operations Agent classification. Otherwise, as indicated by the various exhibits introduced in this matter, the use and assignment of Ramp Agents in a freight facility or as a freight assist varied by location, need and practice. In a number of stations, where there is a high volume of freight, the Company has assigned a Ramp Agent in addition to the freight runners to work full-time in the freight facility moving and stacking freight alongside the Freight Agents.

The Union contends that this grievance is not about pulling a Freight Agent out of the Ontario station's freight warehouse and replacing him with an Operations Agent, and not about adding a new position to the station's freight warehouse. It is about keeping the Ramp Agent that has been there for nearly ten years, with as the Union contends no change in volume, in the position that the Company agreed to ten years ago.

The Company points out that notwithstanding the two position classification descriptions set forth in the CBA – Ramp/Provisioning Agent and Operations/Freight Agent – there actually exists in practice, depending upon location, some cross-utilization or cross-assignment or flexibility in different cargo facilities.[2] Shared duties. Freight Agents work in the cargo facility with the customers at the counter but also in the facility moving and stacking freight. Ramp

[2] I am not lapsing into a broad pronouncement as to the propriety or legality of cross-utilization generally under this CBA or discussing the work of one classification as compared to another as defined in the CBA; rather, I use this terminology solely in the contest of this grievance to set forth what is actually happening in freight facilities in Ontario and elsewhere, subject to the Union's power and duty to police and enforce the CBA.

Agents may also work at what is referred to as freight runners, and when needed, to move and stack freight in the facility alongside the Freight Agents. The Company maintains that in Ontario, the volume of freight is not (or is no longer) sufficient to justify assigning a Ramp Agent to work full-time in the freight facility. Instead, current level of cargo operations at this station can be run efficiently and cost-effectively with just Freight Agents and freight runners.

OPINION OF THE ARBITRATOR

Both parties were well represented in this dispute and presented sound arguments. I appreciate their efforts. Based upon all the facts and evidence before me, and after my review of the applicable provisions of the CBA and WRI, and after an extensive analysis of the Kansas City freight arbitration and other decisions found in Elkouri & Elkouri, *How Arbitration Works* (7th Ed.), it is my conclusion that the Union has failed to sustain its burden of proof under these facts and circumstances and show that the Company violated the CBA when it assigned a Ramp Agent that was assisting the Freight Agents in the freight facility in Ontario to work in a different location on the ramp in Ontario. In support of this conclusion, I make the following specific findings:

a) I always listen carefully to the testimony of Mr. Charles Cerf because he is not only very knowledgeable after his thirty-two years on this property, but he has a tendency to be open and honest and cut to the point. While people were testifying about volume and pounds monthly and eight-year averages at Ontario and the various stations, witness Cerf explains the import of Dr. Allen's decision to be centered around "the cost and the proficiency revolved around *the amount of work in the warehouse* at each facility and the fact that in some facilities there wasn't *enough work* to justify putting in a warehouseman, so it wasn't cost-efficient . . . . when there wasn't *really enough work to do.* (TR. page 22, ll. 3-11) Later, on cross, witness Cerf agrees with Attorney Minchey that *the standard is just as you read, that when the volume of freight at a given location reaches a point where it becomes efficient and cost-effective, then a [R]amp [A]gent may be assigned full time in the warehouse?* It's efficient and cost-effective. *I think both of those, yes.* (TR. page 25, ll. 16-23);

b) I also listened to the testimony of Jesse Perez, Department Manager at Ontario with twenty-two years of experience. I tend to believe and rely heavily on the people on the ground, be they station management, station representatives of TWU or co-workers. To paraphrase Mr. Perez, at the Ontario freight facility, most (80%-90%) of the cargo activity takes place within the first two hours of the day. After that time, the assigned Ramp Agent has a lot of dead time – he mostly would be watching TV. It is not cost-effective to have the Ramp Agent there – it's a waste of manpower – he could be better utilized on the ramp. This testimony was largely uncontroverted. Whether witness Perez is aware of other situations at Las Vegas, Phoenix, Fort Lauderdale or Raleigh-Durham is not relevant to my analysis. The Kansas City freight arbitration teaches us that this is a station-specific analysis, and by implication, one that can change year by year if not month by month;

c) Witness [redacted] testifying with nineteen years of experience both in R&O and also in cargo, verified what witness Perez had said. He described what work the Ramp Agent that was assigned full-time in the freight facility did prior to his reassignment. He generally would assist the Freight Agent in taking the shrink wrap off the UPS Mail Innovations task, and by 9:30 ish, he was watching TV until the freight runner came back with the carts. The next shipment would not normally go out until 45 minutes to an hour. Based on the amount of freight in Ontario, management determined that the existing Freight Agents and freight runners could adequately handle the workload *and that a full-time Ramp Agent in the warehouse was not needed.* The position there was neither *efficient* nor *cost-effective.* That Ramp Agents may also watch TV between flights is not an answer and is not particularly relevant to my analysis;

d) I have carefully studied the previous settlements and grievances submitted into evidence in this case. I mentioned on the record that I had trouble relying on one or more historical attempts to get along and settle things peacefully because a) it was difficult to understand what had actually happened and why a settlement might have been reached, and b) I am not ever going to do anything that has a chilling effect on the Union and the Company getting together and resolving something *on a non-precedent, non-referral basis.* Or, for that matter, where a grievance is *withdrawn without prejudice.* In my book, none of these local or informal resolutions become either a precedent or a matter that the parties may refer to me, other than perhaps as evidence of the fact of the initial action (i.e. the level of discipline given to show consistency, or that the Union grieved a particular issue to negate any inference of past practice) which may indeed have some practical significance. The divergent views between the parties in their Post-Hearing Briefs as they try to explain what these exhibits really meant demonstrates that my first concern is valid. That Bill Venckus may have agreed with [redacted] to resolve ONT-R-0793/08 *based on the current operational need* has little bearing on the grievance before me;

e) And so, we come full circle to the wisdom of Dr. Allen: In the total context of [the answers to WRI # 4, 5 and 6] plus the labor agreement and past practice, . . . *when the volume of freight work at a given location reaches a point where it becomes efficient and cost-effective to assign a RA to full-time work in the freight operation, then by local agreement that can be done.* Conversely, when the efficiency and cost-effectiveness decreases and dictates otherwise, the situation may change (subject to the Union's policing of the CBA) as the Company is *not compelled to place RAs in freight operations throughout the entire system*;

f) In the Kansas City freight arbitration, Dr. Allen was gracious (and in my humble opinion, correct) in "fashioning" payment of the arbitration costs in a way that reflected that *while the Company was the primary "winner," the Union reaped some "positives" from the decision as well.* I do not have that luxury here. The Union won nothing here. It is clear from the [redacted] grievance (ONT-O-2324/13) (Union Ex. 8) that perhaps the Union is not clear what it really wants. As I said in the [redacted] arbitration (SFO-R-1916/13), let's be careful what we ask for. Thus, the costs of this arbitration shall be assessed against the Union as provided in the CBA.

AWARD

After careful consideration of all the oral and written arguments and evidence, and for the preceding reasons, the Arbitrator finds that the Company did not violate the CBA when it assigned a Ramp Agent that was assisting the Freight Agents in the freight facility in Ontario to work in a different location on the ramp in Ontario, and thus the grievance should be and is denied. Any unresolved differences regarding interpretation or application of this Award will be settled by the undersigned upon written request of the parties. The cost of the arbitration shall be borne by the Union.

Signed this 4th day of August, 2014, at San Antonio, Texas.

William H. Lemons

WILLIAM H. LEMONS, Arbitrator